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TOWARDS A LIVING CONSTITUTION OF THE UNITED NATIONS

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This is not an essay in apologetics or an attempt to minimise the staggering political difficulties which are confronting the United Nations in its endeavours to develop into an effective organisation for the maintenance of international peace and security; rather is it considered of importance to appraise, on the basis of its Charter, and in the light of realistic positivism, the avenues still open toward success of the United Nations with regard to its overall purpose as stated in the Preamble, and the very first sentence of Article 1 of the United Nations Charter.

It is certainly true that a balanced review of the United Nations' activities should take into account the complexities of initial organisiation from which the United Nations has emerged successfully though, perhaps, with some loss of prestige. While it is true that the gradual undoing of exaggerated popularity which accompanied the United Nations Conferences may have dampened the hopes of modern Utopians and their fellow-travellers of various shades and political directions, it is, on the other hand, likely that this readjustment may strengthen rather than weaken the position of the United Nations by establishing a truer perspective between the actual possibilities of growth of the United Nations and the prevailing national policies of its members. Moreover, it is apt to

bring to the fore the fact that the social and political environment in which the United Nations has been created is not propitious to drastic changes in matters of international organisation. However, this realisation, far from being tinged with a defeatist note of pessimism, ought to encourage the fuller use and development of the wide resources offered by the Charter of the United Nations. It appears that there is ample place for constructive criticism as well as for practical proposals along this line of thought; and it should be kept in mind that the difficult task of bringing into proper balance the provisions of the Charter of the United Nations with the ever-changing social realities in which this organisation is expected to function effectively will be rendered less hazardous if the many ambiguities which are so characteristic of the basic law of the United Nations are fully exposed and interpreted in accordance with the main purpose of the United Nations, namely, the maintenance of both international peace as well as international security. Such a procedure, it is believed, could strengthen the real authority of the United Nations more effectively than ambitious proposals for amendment of the Charter with a view to creating new international obligations or to curbing the rights of its leading members. Only slow growth through practice can prepare a soil propitious to amendments. On the other hand, changes of the United Nations constitutional law brought about in glaring disregard of existing social realities are likely to remain empty phrases on paper even if such immediate changes were acceptable to the members of the United Nations in accordance with the provisions of Chapter XVIII of the Charter. With this in mind, and making due allowance for the still existing organisational difficulties of the United Nations, it would seem that it is not too soon to expose some of the most striking textual as well as procedural shortcomings of the Charter which are apt to hinder the effective development of the United Nations and likely to accentuate the prevailing political divergencies among its members.

There appears to exist little doubt that one source of present and potential friction, and of possible nullification of the United Nations' most important functions, may be found in the ambiguous wording of certain key provisions contained in the Charter. While the great flexibility of the Charter may perhaps be explained by the desire of certain States not to be hindered in the proper pursuit of their vital national aspirations as well as by the declared intentions of the framers of the Charter to leave to the organs of the United Nations, and especially the Security Council, unobstructed possibilities for purely political compromise, it is, nevertheless, pertinent

to note that the lack of clarity in many important provisions of the Charter is likely to create an atmosphere of uncertainty, particularly among those States to whom these provisions primarily apply. Another source of serious concern may be found in the absence of final procedural agreements among the permanent members of the Security Council which, because of serious disagreement as to the fundamental principles involved, could easily paralyse the Council and also delay all efforts at reconciliation by the General Assembly. Hence, the first efforts of the United Nations should be directed to the task of giving more precise legal interpretation to key provisions of the Charter and of arriving at agreement among the members, including the permanent members of the Security Council, in the event of the organisation being confronted by a supreme test case, such as would present itself if the vital political interests of the leading Powers were to become irreconcilable. At the same time it ought to be fully recognised that any proposals to improve the effectiveness of the United Nations in handling its major tasks must not only approach more realistically the question of maintaining international peace but must also give a satisfactory answer to the international problem of national security. The most promising possibility for improvement, it appears, lies in the gradual creation, without any immediate written amendment of the Charter, of what may be termed a *living and unwritten constitution* of the United Nations. This, it is submitted, can be achieved by developing certain practices in the interpretation and application of the provisions of the Charter, and particularly of those which are primarily intended to render the United Nations an effective instrument for the strengthening of international peace and security. Such growth through practice could not only develop more amicable relations among leading members of the United Nations but might, eventually, pave the way toward successful written amendment of the Charter at a later date. An attempt will be made in the following pages to illustrate by means of a few specific examples some of these general suggestions.

As regards the adoption of certain practices which, as a matter of last resort, may prove capable of avoiding war between the leading Powers, it is well to take note of the frequently-voiced opinion according to which the effectiveness of the United Nations as an organisation for the maintenance of international peace and security depends on continuous agreement of the States specifically mentioned in Article 23 of the Charter, and especially on a harmonious understanding between the Governments of the United

States of America, Soviet Russia, and the United Kingdom. While it is true that the United Nations was built on a voluntary basis and that international law cannot prevent a powerful State from resorting to illegal war, it would, nevertheless, be misleading to suggest that international peace and security depend only or mainly on the existence of cordially friendly relations between all or some leading States. If one were to accept such an opinion without considerable qualification, one would admit that the United Nations will probably cease to function in exactly those circumstances which it was primarily created to overcome, since the experience of the past would seem to show that it is not the small Powers, acting alone, who are likely to disturb the peace. Moreover, if this rather limited outlook which pins the effective existence of the United Nations solely on a propitious political atmosphere prevailing among the ' Big Five ' or the ' Big Three '—or, perhaps, the ' Big Two '—were comprehensive enough to cover all possible activities of the United Nations concerning the maintenance of international peace and security, it would appear that a military alliance among the above-mentioned States could have served the same purposes more effectively and with less organisation and personnel. It is pertinent to remark, however, that this somewhat fashionable but restrictive viewpoint which, supported though it may be by a narrow interpretation of Article 24, section 1, can be justified on the basis of the provisions of the Charter only in cases of armed attack directly committed, or indirectly supported, by a State having a permanent seat on the Security Council. The popular theory that failure of the Security Council to discharge its ' primary responsibility for the maintenance of international peace and security ' (Article 24, section 1) would permit any member of the United Nations to resort to military enforcement action on behalf of the United Nations can be maintained only in cases of armed attack against a member of the United Nations. In all other instances, a State is not permitted to use military force even if it claims that Article 2, section 4, of the Charter has been violated by means of a threat of force or by other acts or omissions inconsistent with the Purposes of the United Nations. It is in this sense only that one can understand the meaning of the official American attitude expressing the conviction that ' if one of the great Powers violates the law of the Charter and the law of Nuremberg [1] against aggression there is, ultimately, only

[1] Reference to the ' law of Nuremberg ' is, it would seem, very unfortunate since the *Charter of the International Military Tribunal* as well as the *Opinion and Judgment* of this Tribunal contradict in important respects the Charter of the United Nations.

one way to enforce the law—and that is by a major war '.[2] This statement refers obviously only to acts of aggression falling within the limited scope of Article 51 of the Charter, which provides for individual or collective self-defence 'if an armed attack occurs against a member of the United Nations'. One can hardly doubt, however, that many other acts or omissions not constituting an armed attack may occur, acts or omissions which might be claimed by one or more States as violations of the Charter, as threats to the peace, or even as breaches of the peace. It needs, for instance, little imagination to think in this connection of economic measures such as tariff regulations and various types of subsidies which, by some States, might very well be considered as threats to their security or even to their national welfare or independence. The same, it would seem, holds true with regard to discriminatory changes of immigration policies, political propaganda, certain political or economic intervention (though without the use of armed force) in the domestic affairs of a foreign State, the unwillingness of States to reduce substantially their national armaments and war potentials, or even the rapid growth in the population of others, to mention just a few examples.[3] In none of these instances would it be permissible to invoke the so-called inherent right of self-defence in accordance with Article 51 of the Charter and to resort to war against the alleged violator of international peace and security without a permissive decision of the Security Council based on Article 39 of the Charter.[4] Since it is well known that such a decision could not be reached against the vote of a State having a permanent seat on the Security Council, it is quite evident that only armed attack against a member of the United Nations would release States from their solemn obligation to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations' (Article 2, section 4). Obviously the scrupulous observance of the Charter of the United Nations might, under such circumstances, pay lip-service to the maintenance of international peace even in

[2] Address of W. R. Austin, chief delegate of the United States to the United Nations General Assembly, October 30, 1946, in *The New York Times*, October 31, 1946, p. 12. It is noteworthy that the so-called 'law of Nuremberg' which establishes individual criminal responsibility for 'crimes against peace' (among which are enumerated also wars of aggression) was declared binding only on the European Axis countries and not on members of the United Nations. No stipulations providing for individual responsibility can be found in the Charter.

[3] The question of domestic jurisdiction is considered later.

[4] The possible objection that States may regain complete freedom of action by invoking Article 2, sec. 7, will be considered later.

cases of severe friction and disagreement between leading Powers. Moreover, it might very well prejudice the legal and political rights of exactly those States determined to support the intentions and wording of the Charter. On the other hand, it is quite certain that the United Nations will have failed utterly in its primary purpose declared to be equal in importance to the preservation of international peace, namely, the maintenance of international security, whenever such an instance should occur. What, then, is the procedure to be proposed for the maintenance or restoration of international security in those instances where the Security Council ceases to function effectively, instances which might be claimed by one or more States to threaten international peace and security, or to have already resulted in a breach of the peace caused by acts not involving armed attack? Surely the popular notion that 'veto or no veto there will be a war if the leading nations disagree in a matter of vital importance' is no satisfactory answer if the main purpose of the United Nations is taken seriously. Moreover, it would seem to be grossly misleading if such a statement were interpreted as being indicative of an inclination on the part of some Powers to adopt purposively a political course which would leave the door open to them for possible resort to a future war in contravention of international treaty obligations, whenever the waging of such a war should be considered politically desirable or economically necessary. Any constructive approach to the problems of international peace and security will eliminate, at the outset, considerations based on such a politically immature attitude. War, even in cases of basic disagreement between leading States, is no inevitable necessity even if the Security Council should cease to function effectively. It is, of course, perfectly clear that once such a clash of fundamental principles or interests has occurred, it would be of little value to refer the parties concerned to Article 33, section 1, of the Charter; nor does recent experience justify the assumption that the Security Council would, under such serious circumstances, be in a position to exercise effectively the functions primarily assigned to it under the Charter of the United Nations. It is exactly at this crucial stage in international developments that the General Assembly can and should be invited to play a decisive role by fully using its authority on the basis of Article 10, Article 11, section 2, Article 14, and Article 35. It can hardly be doubted that the General Assembly is the most representative organ of the United Nations.

This fact is of particular significance for the cases under consideration in this paper, cases where politically provocative tactics

of one Power, the indiscriminate use of Article 27, section 3, for the furtherance of national aspirations of another Power, or the clash of fundamentally opposed political principles might forestall effective action of the Security Council. Meeting as the case may be either in regular or special session (Article 20),[5] it would seem possible for the General Assembly first of all to decide, in accordance with Article 18, section 2, upon full *discussion* of the situation or dispute paralysing effective functioning of the Security Council (Article 10 and Article 11, section 2). Although one might be sceptical of the effectiveness of mere discussions before the General Assembly, their value, it should be noted, can hardly be overestimated if one is at all prepared to expect any tangible results from the public voicing of national opinions before an international forum. If it is correct to accept as practical and realistic the motivating ideas prevailing at the historic United Nations Conference on International Organisation with regard to the importance for the maintenance of international peace and security of free and open interchange of thought before the most representative international meeting available at the present time, then, indeed, it would seem no exaggeration to consider the discussion clause contained in Articles 10 and 11 of the Charter not only as 'the key to the whole role of the Assembly in the United Nations Organisation'[6] but as the most promising pass-key to any efforts aimed at the successful maintenance of international peace and security. Moreover, it is not likely that the majority of the members of the United Nations will object to such a course since it may be assumed that they concur, in principle, with the official attitude of the United States illustrated, for example, in the statements that 'of all the institutions of the United Nations, the General Assembly is by its constitutional functions and its potentialities the most important',[7] or that 'there can be no doubt that it (the General Assembly) has a vast and increasingly important position to fill in the international community',[8] or that 'by discussion it can clarify the issues and promote mutual understanding among the nations and peoples of the world'.[9] With such and similar statements made in abundance,

[5] In view of developments subsequent to the writing of this article, it should be noted that the duration of a special session of the General Assembly is not limited in time. If convoked in accordance with Article 20 and acting in conformity with the Charter of the United Nations, legal objections raised against the creation of a standing committee of the General Assembly could have been avoided.

[6] L. M. Goodrich and E. Hambro, *Charter of the United Nations*, Boston, 1946, p. 95.

[7] W. R. Austin, 'Address before the United Nations General Assembly', *New York Times*, October 31, 1946, p. 12.

[8] *Ibid.*

[9] *Ibid.*

it would be inconsistent to stress in general phrases the role assigned to the General Assembly and to reject, at the same time, proposals for the most extensive use of its potential resources. It would seem that the General Assembly could, by means of international practice, be developed into the accepted forum of last instance charged with the responsibility of discussing any situation or dispute between States and, if necessary, of making appropriate recommendations in all cases claimed by any member of the United Nations to constitute a threat to, or breach of peace and/or international security. It is, of course, quite possible to object at this point that such development of international practice is superfluous since the ratification of the Charter already implies permission to make use of the General Assembly's discussion clause. In theory, such an objection would be correct. In practice, however—and this essay is concerned with practical steps for the maintenance of international peace and security—only continuous and widely publicised emphasis of the role assigned to the General Assembly can give reasonable assurance that the proposed procedures and interpretations are acceptable to, and will be followed by the members of the United Nations in situations of severe international tension.

It is, of course, conceivable that mere discussion, exposing as it would, quite different points of view, might not produce the desired results; but there can be little doubt that a *decision* of the General Assembly to make specific *recommendations* will carry far more weight than mere discussion, especially if such a decision should reflect the opinion of an overwhelming majority of States. In view of the restrictive stipulations contained in Article 11, section 2, Article 12, Article 14, and Article 35, section 3, it appears highly desirable to counter, at the outset, certain legal objections which may be raised concerning the competence of the General Assembly to make recommendations with regard to questions ' on which action is necessary ' (Article 11, section 2), and with regard to disputes or situations in which ' the Security Council is exercising . . . the functions assigned to it ' in the Charter of the United Nations (Article 12).[10] In this connection it is also important to note that any discussion or recommendation of the General Assembly could be rejected by simply invoking the provisions of Article 2, section 7, of the Charter with the assertion that a situation or dispute covers

[10] It is, perhaps, interesting to note that some six months after this essay had been submitted for publication these objections were raised in the course of proposals for the creation of a Standing Committee of the General Assembly known as the *Interim Committee* of the General Assembly. A short addition to this essay written just before the latter was sent to the printers, and taking cognisance of this important development, will be found at the end of this article.

matters which are essentially within a State's 'domestic jurisdiction'.[11] Accordingly, if growth through practice of the Charter is to be achieved, it is imperative to reach also an understanding as to the interpretation of this Article which otherwise could be turned into the most brilliant provision permitting escape from nearly all obligations under the Charter.

When considering in some detail these suggestions and difficulties, it is possible to point to the Charter which beyond doubt renders the General Assembly competent to *discuss* any questions relating to the maintenance of international peace and security so long as Article 2, section 7, is not violated, even if the same questions are on the agenda of the Security Council. The stipulation according to which the General Assembly shall refer to the Security Council, either before or after discussion, any question 'on which action is necessary' obviously means only enforcement action of the Security Council; it does not apply to action implied in a decision of the General Assembly to make recommendations with regard to the maintenance of international peace and security. However, it will be observed that Article 11, section 2, Article 14, and Article 35, section 3, permit recommendations of the General Assembly only if and when the provisions of Article 12 preventing the General Assembly from making recommendations do not apply, *i.e.* (a) if the Security Council is not exercising in respect to any dispute or situation the functions assigned to it in the Charter, or (b) if the Security Council has requested the General Assembly to make recommendations with regard to a specific dispute or situation (Article 12, section 1). Under this clause the official information that the Security Council is not dealing with such specific matters relative to the maintenance of international peace and security can be transmitted to the General Assembly by the Secretary General of the United Nations only with the consent of the Security Council. Such a consent, it would seem, involves a decision of the Security Council which may be prevented by any one of its permanent members.[12] Hence one might be inclined to view unfavourably the chances of the General Assembly making recommendations under the above-mentioned circumstances, since a State blocking a decision of the Security Council appertaining to a certain dispute or situation, will not be prepared to risk possibly undesirable recommendations with regard to the latter by the General Assembly.

[11] See, however, United Nations Conference on International Organisation, Doc. 443, II/2/19, May 19, 1945, where it is stated that 'there should be no limitation whatsoever upon the right of the General Assembly to discuss any matter in the sphere of international relations at any time', and that 'the interpretation of the expression "international relations" should be the widest possible . . .'.

[12] L. M. Goodrich and E. Hambro, *op. cit*, p. 101.

Given these circumstances, it is equally true, however, that the Security Council might not find itself in a position to notify the General Assembly of any matters relative to the maintenance of international peace and security which are being dealt with by the former (Article 12, section 2). The question, therefore, might very well arise as to which organ of the United Nations would be competent to render a decision as envisaged under Article 12 of the Charter. It is at this point where growth through practice, again, may play a beneficial role. Giving wide and continuous publicity to their common or majority understanding long before a serious dispute or situation is likely to separate members of the United Nations beyond repair, the General Assembly could interpret Article 12 to the effect that the Security Council shall be understood not to be exercising the functions assigned to it under the Charter whenever the veto of a permanent member should prevent it from discharging its primary responsibility for the maintenance of international peace and security. The General Assembly would, in such a case, be competent to render the decision relevant to this fact. Such an understanding would be in line with the importance attached to the General Assembly by the members of the United Nations. Moreover, it would not constitute an amendment or a violation of the Charter since it would conform to its word and its spirit, especially in all those truly important cases where adjustment or settlement by peaceful means is regarded as the main task of the United Nations. One might even go one step further in this direction by accepting the interpretation that the General Assembly is authorised by the Charter to consider the Security Council as not dealing with a matter mentioned in Article 12 so long as the Secretary General has not notified the General Assembly, or the members of the United Nations, to the contrary. If this view is accepted, it would follow that the question as to whether the Security Council is dealing with a matter reserved to its competence could, in the absence of an affirmative notification by the Secretary General as provided for by Article 12, section 2, be decided in the negative by the General Assembly, thus permitting the latter to use to the fullest extent its resources for the maintenance of international peace and security.[13]

The emphasis on the wide use of the General Assembly's discussion clause and on its power to make weighty recommendations by no means exhausts the suggestions for an effective practice of the potential resources offered by the Charter of the United Nations.

[13] For a similar interpretation see Hans Kelsen, 'Organisation and procedure of the Security Council of the United Nations', in LIX *Harvard Law Review* (No. 7), p. 1114.

Thus, reference may be had to Article 96 of the Charter, which stipulates that ' the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question ', and to Article 65 of the Statute of the International Court of Justice which permits the latter to ' give an advisory opinion on any legal question at the request of whatever body may be authorised by or in accordance with the Charter of the United Nations to make such a request '. At first glance the restriction of the court's competence to render advisory opinions only on ' legal ' questions might be considered as a serious stumbling block in the way of important action of the United Nations' ' principal judicial organ '. The term ' legal ' question obviously implies that there exist other questions which are not of a legal nature and which, therefore, are not justiciable by a court. Eminent writers of highest authority have shown the fallacy of this conception.[14] It is, of course, quite possible to enter opposing claims with reference to some higher law, to morals, justice, the inherent right to living space, and the like. But it is equally clear that any claim relating to an international situation or dispute can be adjudicated on the basis of existing general or particular international law. Hence, if the term ' legal dispute ' refers to a specific type of dispute denoting that it is justiciable by a court of law, the conclusion reached in accordance with the rules of positive law must be that all disputes have the character of legal disputes. If, however, this interpretation is not accepted and the division between legal and political disputes is upheld, it would still be necessary to determine in advance the organ competent to decide whether a dispute is a legal or political one. If the main purpose of the United Nations is to be taken seriously, such decision could not be left to the parties concerned. It would have to be made by the General Assembly whenever the Security Council is rendered inoperative and, in order to produce the desired effect, it would

[14] H. Kelsen, *Peace through Law*, Chapel Hill, 1944, pp. 29–30: ' A positive legal order can always be applied to any conflict whatever. Only two cases are possible: either the legal order contains a rule obliging one party to behave as the other party demands, or the legal order contains no such rule. In the first case, the application of the legal order to the conflict has the effect of admitting the claim; in the second case, the application of the legal order has the effect of rejecting the claim. The rule system of the international legal order is applicable in both cases; and consequently, political as well as legal conflicts are justiciable in the true sense of the term, indicating that they can be settled by a judicial decision applying positive law to the conflict '.

See also J. L. Brierly, *The Outlook for International Law*, Oxford, 1944, where this prominent author declares on p. 122, ' *Any* dispute is justiciable if the parties are willing so to treat it, because any dispute can be expressed in the form of a claim by one State upon another, and there is never any technical or formal difficulty which can prevent a court from declaring whether this claim is or is not well founded in law '.

have to be concurred in by the International Court of Justice. It would certainly seem within the spirit if not the strict law of the United Nations to emphasise, therefore, the international understanding that the General Assembly shall be competent to request, at any stage of a situation or dispute where the Security Council ceases to function effectively, an advisory opinion from the International Court of Justice. Even if the latter should declare itself incompetent to render such an opinion, the finding that a claim or counterclaim has no legal foundation, supported as it would be by the high prestige attached to the principal judicial organ of the United Nations, could greatly facilitate the endeavours of the General Assembly and support the latter's recommendations. It is, however, not likely that the court would consider itself incompetent to deliver an advisory opinion once the matter is submitted to it by the General Assembly. While it is perfectly true that even the acceptance of Article 36, section 2, of the Statute of the International Court of Justice, providing for so-called compulsory jurisdiction, leaves to each State the right of deciding whether a specific claim involves a *legal* dispute [15] it is of great importance to note that the very same Article, by enumerating certain types of justiciable disputes, gives to the court possibilities of a nearly unlimited range of jurisdiction. It is, perhaps, only necessary to refer in this connection to the jurisdiction of the court in all disputes concerning 'the existence of any fact which, if established, would constitute a breach of an international obligation' (Article 36, section 2c) in order to support this interpretation, especially since the Charter of the United Nations creates international obligations binding not only on all members of the United Nations but, by the implications of Article 2, section 6, on all other States as well. Since a request of the General Assembly for an advisory opinion under Article 96 of the Charter does not require the voluntary submission of the States concerned to the jurisdiction of the court, it would seem difficult to find any serious legal obstacle to the extensive use of the court's advisory functions once a decision of the General Assembly to request an advisory opinion has been made. Thus, the International Court of Justice, when frequently

[15] See, for instance, 'Recognition of compulsory jurisdiction of International Court of Justice, Declaration on the part of the United States of America', in Department of State Bulletin, Vol. 15 (September 8, 1946), p. 453, where it is provided 'that this declaration shall not apply to disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America *as determined by the United States of America*' (italics supplied). This Declaration rejects *a priori* the possible interpretation that the International Court of Justice, on the basis of Article 36, sec. 6, of its Statute, enjoys—at least—concurrent jurisdiction over the question as to whether or not a dispute is essentially within the domestic jurisdiction of a State.

delivering advisory opinions in cases of a serious nature, may grow into a most valuable organ of the United Nations by supporting effectively the efforts of the General Assembly aimed at maintaining international peace and security. If this procedure is followed it will be even more difficult for recalcitrant Governments to defy recommendations of the General Assembly upheld by an advisory opinion of the International Court of Justice.

Another matter of great concern, if peace and security are to be achieved by international practice, is the ambiguous wording of Article 2, section 7 of the Charter, which constitutes not only a serious 'limitation upon all the activities of the Organisation'[16] but could completely paralyse the entire efforts of the General Assembly to save international peace, or to restore international security, since the arbitrary use of this provision can prevent discussion as well as recommendations with regard to any situation or dispute. Since any precise reference to objective standards by which the decision as to whether a matter is 'essentially within the domestic jurisdiction' of a State was rejected at the United Nations Conference on International Organisation,[17] it would be highly unrealistic to expect leading members of the United Nations to change their attitude in this respect at the present time. It is conceivable, however, that agreement could be reached among prominent members of the United Nations empowering the General Assembly to decide, at least in all those cases where the Security Council ceases to function effectively, whether or not a matter is essentially within the domestic jurisdiction of a State. In fact, it would be only on the basis of such a preliminary decision of the General Assembly rejecting the assertion that a matter is essentially within the domestic jurisdiction of a State, that discussion of a situation or dispute, or recommendations related to it, would be permissible without violating the law of the United Nations. No provision of the Charter, it is pertinent to note, prevents the Security Council or the General Assembly from deciding whether a dispute or situation

[16] L. M. Goodrich and E. Hambro, *op. cit.*, p. 72.

[17] United Nations Conference on International Organisation, Report of Committee IV/2, Doc. 933, IV/2/42. See also UNCIO, Summary Report of 16th Meeting of Committee I/1, June 13, 1945, Doc. 987, I/1/40, and the same, June 14, 1945, Doc. 1019, I/1/42.

See also 'Report to the President on the results of the San Francisco Conference', in Hearings before the Committee on Foreign Relations, United States Senate, Seventy-ninth Congress, First Session (July 9–13, 1945), pp. 56–58, where the view is expressed that international law is 'indefinite and inadequate', and cannot, therefore, be used as a measuring rod for the determination as to whether or not a matter is essentially within the domestic jurisdiction of a State. It is pertinent to note that this conception does, in the final analysis, permit every State to be the sole judge in its own cause, thus nullifying any attempts at effective international organisation.

is of an international or national character.[18] Growth through practice of the United Nations could, however, eliminate possible doubts and prevent future conflicts of competence by restraining States from reserving only to themselves the right to make the decision as to whether a matter is essentially within their domestic jurisdiction. Unless such a course is adopted it may be feared that the efforts of the United Nations to maintain international peace and security will hardly be more successful than those of its unfortunate predecessor, the League of Nations. This, it would seem, is not only true with regard to the Organisation's main purpose but also as far as its functions under Chapters IX and X are concerned.[19]

Another provision urgently requiring clarification and implementation is the ominous Article 39 of the Charter, which permits the Security Council to determine 'the existence of any threat to the peace, breach of the peace, or act of aggression . . .'. Obviously, if the Security Council should be in a position to arrive at such a decision, it also will be able to agree on enforcement measures provided by Articles 41, 42, and 45. It is perfectly clear, therefore, that the much advertised responsibility of the Security Council for the maintenance of international peace and security can be discharged effectively only under highly propitious political conditions; nor could the sanctions provided for under Chapter VII of the Charter be applied against any of those States which are most likely to threaten or break international peace and security. Hence the conclusion is at hand that Chapter VII may, at best, become effective with regard to smaller States.[20] In this connection it will be observed that the Security Council is not bound to discharge its duties specified in Articles 39, 41, 42, and 45, in 'conformity with the principles of justice and international law' (Article 1, section 1) since the latter obligation refers only to the *peaceful* 'adjustment or settlement of international disputes or situations which might lead to a breach of the peace'. It does not refer to cases necessitating 'effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace'. Even if such a strictly textual interpretation is rejected as being too 'legalistic' —and it seems odd to encounter an ever-growing number of arguments which reject a legal approach to a legal instrument, such

[18] For an opposite view see H. Kelsen, *Limitations on the Functions of the United Nations*, *op. cit.*, p. 1006, where the author states that '. . . the Council can intervene only if it assumes the power to decide whether the matter is essentially within the domestic jurisdiction of the member so claiming. Such assumption of power would be in disregard of the words of the Charter'.

[19] *Ibid.*, pp. 1006–1007.

[20] Colombos, 'The United Nations Charter', I.L.Q., Vol. 1 (1947), pp. 28–29.

as is the Charter—it would still be necessary to admit that enforcement actions of the Security Council must not necessarily be in conformity with international law since they may be based as well on notions of justice. Justice, however, refers to highly subjective standards of values which differ widely. Justice is not always identical with existing rules of law. The argument, therefore, has been advanced that the powers of the Security Council with regard to coercive actions will be influenced by political rather than by legal considerations whenever the Security Council bases its actions on principles of justice in disregard of existing rules of international law. The consistent adherence to this critical viewpoint, however, would lead to the logical conclusion that the Security Council may proceed with 'sanctions' not only against a party which has violated previously known and precisely defined obligations of the Charter, but also against a State which, 'from the point of view of international law', has faithfully carried out its obligations under the Charter. Hence the Charter has been attacked on the ground that 'with respect to enforcement measures there is no difference between a member (of the United Nations) which has violated its obligations under the Charter, and a member which is not guilty of any such violation'.[21] A good number of delegates to the United Nations Conference on International Organisation which convened at San Francisco on April 25, 1945, objected to the theoretically unlimited powers given the Security Council for the maintenance of International peace and security. However, a proposal made in Committee I/1 according to which one of the purposes of the United Nations was 'to maintain international peace and security *in conformity with the principles of justice and international law*' (italics mine), was defeated by a vote of 19 to 15. Even the more vaguely worded proposal to qualify the Security Council's right to maintain peace by the adjective 'in conformity with justice', while dropping all reference to international law, was defeated in the same committee by a vote of 19 to 12. It is also noteworthy that the official American attitude with regard to the powers to be granted to the Security Council was clearly expressed in the Report to the President on the results of the San Francisco Conference (Department of State Publication 2349, Conference Series 71). There it is stated that efforts were made during the Conference 'to restrict the freedom of the Security Council by proposing that it be limited in its decisions by reference to principles of international law or justice' (p. 84). The Report then justifies the opposition of

[21] Hans Kelsen, 'Sanctions in International Law under the Charter of the United Nations' in 31 *Iowa Law Review* (May, 1946), p. 520.

the United States Government, and of other nations, to such limitations of the Security Council's powers by declaring that the Security Council 'should not be hampered by detailed direction of its activities' (p. 85).

In spite of the absence of legal restraints hampering its activities it may be hoped that the Security Council when invoking Article 39 will direct sanctions only and solely against a State which has violated specifically defined obligations of the Charter by declaring that such violations constitute a 'threat to the peace, breach of the peace, or act of aggression'. However, it is quite possible to think of a situation where the Security Council could decide that some other act, not expressly formulated or defined by the Charter as an obligation, constitutes a threat to the peace, breach of the peace, or act of aggression. Such a course cannot be excluded since the Charter does not contain any provisions defining the meaning as to what may be considered a threat to the peace, breach of the peace, or act of aggression.[22] It is well to remember in this connection that the obligation imposed upon all members of the United Nations by Article 2, section 4, namely to 'refrain from the threat or use of force against the territorial integrity or political independence of any State or in any manner inconsistent with the Purposes of the United Nations' is far more restrictive in its scope than the wording used under Article 39.[23] Even if one discounts reference to the highly ambiguous term 'act of aggression', it still would be possible for the Security Council to interpret as a 'threat to the peace', or 'breach of the peace', the non-compliance with any recommendation permissible under the Charter such as are, for instance, provided under Articles 10, 11, 14, 36, 37, or 38. The same consideration, it would seem, holds true with regard to the rejection of 'plans' concerning the regulation of armaments (Article 26), or the refusal to comply with a 'call' issued by the Security Council in pursuance of Article 33, section 2. Since it is impossible for a State to know in advance whether the rejection of a 'recommendation', or a 'plan', or a 'call' will be declared by the Security Council as a violation of a legal obligation conditioning the application of Articles 39, 41, 42 and 45, it may be feared that the enforcement provisions of Chapter VII will create an alarming degree of insecurity among those States to whom they

[22] The official American interpretation implies that preventive or enforcement action can be taken only against a State 'which has violated its obligations under the Charter'. See Report to the President on the Results of the San Francisco Conference by the Secretary of State, in Department of State Publication 2349, Conference Series 71, p. 42. Article 39, however, constitutes such an 'obligation' under the Charter.

[23] Hans Kelsen, *op. cit.*, p. 516.

could possibly apply. This fearful aspect is substantiated by the fact that enforcement measures must not be taken exclusively against the State which, in the opinion of the Security Council, is guilty of a threat to the peace, breach of the peace, or act of aggression. The Security Council may direct coercive action against any party to a dispute since, as stated officially before the Foreign Relations Committee of the United States Senate, the Security Council ' does not have to wait until there is a determination of who is right and who is wrong. The problem is to stop the fighting or to remove the threat to the peace as soon as possible '.[24] As pointed out in a recent commentary,[25] the broad authority conferred upon the Security Council under Article 39 is not controlled by conceptions or standards which can be defined precisely. Hence a situation could arise where the Security Council might very well consider it important ' to stop the fighting ' by directing enforcement action not against the State which has violated the Charter of the United Nations or international law in general, but against the party which has scrupulously observed the law. Such coercive action when carried out by the Security Council as a measure of political expediency, although motivated by the desire to maintain or restore international peace, may lead, in the final analysis, to the ' prejudice of legal rights as well if, as the result of enforcement action taken, a party feels constrained to accept terms of settlement which originally it refused to accept '.[26]

The previous analysis, it would seem, clearly demonstrates the necessity for implementation of Chapter VII of the Charter. Here, again, agreement among the leading nations might be reached clarifying Article 39 of the Charter to the effect that the Security Council will resort to sanctions only where an *armed attack* against a member of the United Nations is imminent, or has already occurred. In all other cases claimed to constitute a threat to, or breach of the peace, the Security Council should put itself on record that, first, it will resort only to methods of pacific settlement or adjustment. In case of their failure, it would seem advisable to agree upon the use of the General Assembly, as suggested previously, if a status of political security is to be maintained among States which have no permanent seats on the Security Council. Hence, it would be necessary to announce that the Security Council,

[24] L. Pasvolsky in Hearings before the Committee on Foreign Relations, *op. cit.*, p. 282.
[25] L. Goodrich and E. Hambro, *Charter of the United Nations. Commentary and Documents*, *op. cit.*, p. 160.
[26] L. Goodrich and E. Hambro, *op. cit.*, p. 160.

in accordance with a standing agreement to be concluded previously, will avail itself of the possibilities offered under Article 12 of the Charter by asking the General Assembly for recommendations to be supported by an advisory opinion of the International Court of Justice. Only after rejection of such recommendations by one or more of the parties concerned should it become the practice of the Security Council to resort to political, economic, and possibly military enforcement measures. Such a procedural understanding, one may expect, would greatly alleviate the fears of smaller States that they might become the rather helpless pawns in the dangerous game of power politics if the theoretical assumption under the Charter of the United Nations, namely, harmonious agreement among the permanent members of the Security Council, should find its expression in political reality.

The urgent need for a more extensive use of the General Assembly in the cause of peace has recently been recognised by an overwhelming majority of the delegates representing member-states of the United Nations at the annual session of the General Assembly. The United States proposal for an Interim Committee submitted during this session purports, according to official statements, to enable the General Assembly to discharge its responsibilities under the Charter and ' to restore the world's confidence in the efficacy of international processes '.[27] This proposal, clipped by numerous amendments of its perhaps too youthful aspirations and far-reaching implications, has been adopted by the General Assembly on the basis of a resolution carried in its Political and Security Committee by a vote of 43 to 6, with six abstentions.[28] In view of the legal and political objections raised by certain Governments against the creation of the Interim Committee, the statement of a leading British jurist should, perhaps, be noted, when he declared that ' it is just as wrong for a majority to endeavour to impose its interpretation of the Charter on a minority as it would be for a minority to do so.[29]

[27] *United Nations Weekly Bulletin*, Vol. 3 (October 28, 1947), p. 550.

[28] For the text of the resolution see, for instance, *The New York Times*, November 7, 1947, p. 8.

For the original proposal of the United States see Doc. A/C.1/196, September 26, 1947, and A/C.1/196/–Corr. 1, September 29, 1947.

For the proposal submitted by the United Kingdom see Doc. A/C. 1/215, October 16, 1947.

For the proposal submitted by Australia see Doc. A/C. 1/213/Corr. 1, October 17, 1947.

For the amendment to the United States proposal submitted by Canada see Doc. A/C.1/217, October 17, 1947.

For the amendment to the United States proposal submitted by Argentina see Doc. A/C.1/216, October 17, 1947.

[29] Sir Hartley Shawcross as quoted in *The New York Times*, October 22, 1947, p. 7.

Among the main features of this new 'subsidiary organ of the General Assembly established in accordance with Article 22 of the Charter' (Article 2 of the Resolution) might be mentioned the Interim Committee's right 'to consider and report with its conclusions on any dispute or any situation which, by virtue of Articles 11 (2), 14, or 35 of the Charter, has been proposed for inclusion in the agenda of the General Assembly by any member of the United Nations . . .' (Article 2, section B, of the Resolution), and 'to conduct investigations and appoint commissions of inquiry within the scope of its duties . . .' (Article 2, section E, of the Resolution). Provision is made that the Interim Committee shall 'take into account' the responsibilities of the Security Council under the Charter 'for the maintenance of international peace and security . . .' (Article 3 of the Resolution).

No doubt exists that it is possible to challenge with 'factually sound and legally unassailable'[30] arguments some of the basic activities to be conducted by the Interim Committee. It is hard to see why the International Court of Justice has not been, or should not be requested for an advisory opinion with regard to the delicate legal questions appertaining to the creation of the Interim Committee and to its proposed functions. The court, indeed, would be the most competent organ to interpret authoritatively those provisions of the Charter of the United Nations which, by a majority in the General Assembly, have been invoked as the legal basis for the creation of the Interim Committee. Unless certain Governments are prepared to accept Articles 18 and 96 of the Charter of the United Nations only if this should further their national interests, it is difficult to accept the argument that submission to a decision of the International Court of Justice in this matter 'would set the court above the entire structure of the United Nations, although it is actually only one organ of the United Nations'.[31] Certainly, such an argument is legally untenable.

Attempts to create a living constitution of the United Nations, if the latter is to approach the principle of universality, will be seriously hampered by the refusal of the Soviet Government and of others to share in these vital efforts. It would have been a prerequisite to secure the co-operation of these Governments if the purpose of the Interim Committee was to make a more effective use of certain provisions of the Charter of the United Nations as

[30] Dr. Herbert V. Evatt as quoted in *The New York Times*, November 6, 1947, p. 3.
[31] Andrei Y. Vyshinsky, as quoted *ibid.*, November 7, 1947, p. 8.

suggested in the foregoing analysis. Growth through peaceful practices in the international field may involve slow processes. It is the middle-of-the-road policy rather than favouring the crystallisation of ideological extremes which, it would seem, will assure the success of peaceful co-operation among nations. This is particularly true since it is highly problematical whether international peace and security can be maintained by force.

THE RECOGNITION OF FOREIGN JUDGMENTS UNDER A FULL FAITH AND CREDIT CLAUSE

By Zelman Cowen, b.c.l.

The common law rules concerning the recognition and enforcement of foreign judgments are sometimes subject to modifications in the case of federal systems of law. An interesting illustration is to be found in the 'full faith and credit' clauses in the constitutions of the United States of America and the Commonwealth of Australia. Act IV, section 1, of the former, and section 118 of the latter constitution provide that full faith and credit shall be given throughout the federation to the laws, acts, records and judicial proceedings of the states. There are additional legislative provisions on this point. In the United States there is an Act of Congress of 1790, while in Australia the State and Territorial Laws and Records Recognition Act, 1901–1928, provides that the judicial proceedings of any state or territory, if proved or authenticated in the manner required by the Act, shall have such faith and credit given to them in every court as they have by law or usage in the court of the state or territory from whence they are taken.

The operation of these provisions has been considered by the Supreme Court of the United States in recent years, notably in the two cases of *Williams* v. *North Carolina*.[1] In the second *Williams Case* the court by a majority held that a state was entitled, before granting recognition to a judgment of a court of another state, to inquire into the jurisdictional competence of the court pronouncing the judgment. The actual decision was that North Carolina was not bound to recognise a Nevada divorce decree in a case in which Nevada had assumed jurisdiction on the footing that the petitioner was domiciled in that state, when in the opinion of the North Carolina court it could be shown that the petitioner was not in fact domiciled in Nevada. As Frankfurter, J., put it :

> 'The decree of divorce is a conclusive adjudication of everything except the jurisdictional facts upon which it is founded, and domicile is a jurisdictional fact. To permit the necessary finding of domicile by one State to foreclose all States in the protection of their social institutions would be intolerable'.[2]

[1] (1942), 317 U.S. 287; (1945), 325 U.S. 226.
[2] (1945), 325 U.S. 226, 232.

Falconbridge regards the decision in the *Williams Case* as justifiable, because the case was an extreme one.[3] It has provoked much discussion in the United States.[4] Lorenzen supports it on the ground that a contrary decision would have permitted Nevada to impose her divorce law upon the United States.[5] However, in *Harris* v. *Harris*[6] a Victorian court, after careful consideration of the American authorities, came to a different conclusion. In that case a marriage was dissolved on a wife's undefended petition by the Supreme Court of New South Wales. The wife alleged a domicile in that state. The husband later remarried in Victoria, and subsequently petitioned the Victorian court for a dissolution of this second marriage. A question arose as to the domicile of the husband at the date of the first divorce, and the point for decision was whether, on the assumption that the husband was at that date domiciled in Victoria, the decree of the New South Wales court should be recognised in Victoria. The New South Wales court had based its jurisdiction upon domicile, and the problem in the *Williams Case* was thus squarely raised. If the divorce was invalid, it followed that the second marriage was a nullity and the Victorian court had no jurisdiction to entertain the husband's petition.

Fullagar, J., pointed out that the judgment of the New South Wales court was final and conclusive in that state, and could not be challenged there in collateral proceedings. The question was whether the State and Territorial Laws and Records Recognition Act, s. 18, bound the Victorian court to recognise the decree, even though that court might be satisfied that the petitioner at the date of the action in New South Wales was not domiciled in that state. If the American interpretation of the full faith and credit provisions was correct it was open to the Victorian court to refuse to recognise the decree if it could be shown that the New South Wales court had no jurisdiction. The decision of the Supreme Court of the United States in the *Williams Case* showed, in the words of Fullagar, J., that ' the truth seems to be that such constitutional guarantees are not regarded as " absolute " : they have to be reconciled with other provisions of the Constitution and with legitimate State interests and State policies '.[7] But the Commonwealth Act was precise and unambiguous, and on ordinary rules of interpretation it called for

[3] *Conflict of Laws*, p. 675.
[4] See, *e.g.*, Lorenzen, *Selected Articles on the Conflict of Laws*, pp. 417 *et seq.*; Powell, 58 Harvard L.R. 930; Corwin, 93 U. of Penn. L.R. 341.
[5] *Op. cit.* at pp. 417 *et seq.* It may be added that if the view of the minority had prevailed, the doctrine of *Armitage* v. *Att.-Gen.*, [1906] P. 135, would have given even greater importance to a Nevada decree.
[6] [1947] Argus L.R. 106.
[7] [1947] Argus L.R. at p. 113.

the recognition of a New South Wales decree even though, in the view of the Victorian court, New South Wales was not justified in assuming jurisdiction.

Fullagar, J., made some interesting comments upon the applicability of the American decisions. 'In the present case it is impossible to overlook a number of very special considerations which exist in the United States but which do not exist here. These considerations apply, I think, or may apply, to all State judgments, though they have become more conspicuous in the field of divorce'.[8] In the United States, the effect of compelling recognition of the Nevada decree would be to impose on many other states a fundamentally different divorce law. In Australia, while there were differences in substance and procedure between the divorce laws of the various states, they were trifling when compared with differences in the United States. In addition the learned judge thought that the fourteenth amendment to the United States Constitution affected the matter, as also did the fact that the Commonwealth Parliament, unlike Congress, possessed a general power to legislate with respect to marriage and divorce.

This decision, when compared with the American cases, does expose the difficulties involved in the application of a full faith and credit clause. The effect of the American decisions is, as Fullagar, J., pointed out, to make of full faith and credit a relative and not an absolute thing. On the other hand, the Victorian decision destroys, as between the states, any jurisdictional limitations on state courts, so that New South Wales (or any other state) can impose her law on the other states. It is interesting to note Fullagar, J.'s point that, in the field of divorce law, there are no disparities between bodies of state law comparable to those which exist in the United States. Yet it does not seem that the decision rested upon this point, for the learned judge expressly relied upon the words of the Act.

If this decision correctly states the operation of full faith and credit provisions in Australia, the common rules relating to jurisdiction are of little importance as between the states. It is true that *Harris* v. *Harris* was only concerned with the recognition of a judgment of a sister state, but it is submitted that precisely similar considerations apply to the *enforcement* of such a judgment.[9] The Service and Execution of Process Act, 1901–34, provides for the registration and enforcement of a judgment of a court of record of any state in any other state. Here it should be noted that unlike

[8] [1947] Argus L.R. 113.
[9] See W. L. Morison, *Extra-Territorial Enforcement of Judgments within the Commonwealth of Australia*, 21 A.L.J. 298.

the common law rule which limits the *enforcement* of foreign judgments to judgments for a sum certain in money,[10] the Commonwealth Act also provides for the enforcement of judgments which order a forbearance or require an act to be done.[11] Read [12] considered that if a court of record of a state lacked jurisdiction under the common law rules, the Service and Execution of Process Act did not oblige another state to enforce its judgments. But *Harris* v. *Harris* is opposed to this view, for its ratio is obviously applicable to enforcement.

It follows then that a situation such as that which arose in *Duke* v. *Andler* [13] cannot arise as between Australian states. If the New South Wales court decrees the specific performance of a contract involving Victorian land, then, provided that the decree is final and conclusive in New South Wales a Victorian court must enforce it if the appropriate steps are taken under the Service and Execution of Process Act. Of course, if facts precisely analogous to those in *Duke* v. *Andler* arose, and a New South Wales court decreed specific performance of a contract involving New Zealand land, the result might well be precisely the same as in *Duke* v. *Andler*, so that the New Zealand court would refuse to enforce the decree on the ground that New South Wales had no jurisdiction. Counsel in *Harris* v. *Harris* made a similar point when he said that decrees of the Supreme Court of New South Wales receive a wider recognition in Victoria than those of the Supreme Court of New Zealand.[14] Again, a case like *Shaw* v. *Gould* [15] would be differently decided if the relevant facts occurred in New South Wales and Victoria. There, property was left to the children of Elizabeth. Elizabeth had married Buxton, a domiciled Englishman. She subsequently secured a divorce from a Scottish court which pronounced a decree on the footing that the parties were domiciled in Scotland. Elizabeth then married a domiciled Scotsman and had children by him. The House of Lords held that these children were not legitimate because the parents were not validly married. The Scottish divorce could not be recognised because the Scottish court had no jurisdiction to make the decree, since, in the view of the English court, Buxton was domiciled in

[10] *Sadler* v. *Robins* (1808), 1 Camp. 253; Cheshire, *Private International Law* (3rd ed.), pp. 801–2.
[11] Service and Execution of Process Act, 1901–34, s. 23.
[12] *Recognition and Enforcement of Foreign Judgments*, p. 304.
[13] [1932] S.C.R. 734. A Californian court made a decree ordering X, resident in California, to reconvey to Y land in British Columbia. The Supreme Court of Canada held that the decree was not entitled to recognition in British Columbia. See 49 L.Q.R. 547.
[14] [1947] A.L.R. at p. 107.
[15] (1865), L.R. 3 H.L. 55.

England at the relevant time. If the matter had arisen in a Victorian court, and if the decisive question was the validity of a New South Wales decree of divorce, *Harris* v. *Harris* would be directly in point.

The conflict between *Harris* v. *Harris* and the second *Williams Case* illustrates very clearly the problems involved in applying full faith and credit clauses. It would be interesting to have the views of Falconbridge on *Harris* v. *Harris*, observing that he justified the *Williams Case* in the 'extreme' circumstances. Although this statement is not developed, it suggests a doctrine of public policy as a restriction upon the operation of full faith and credit provisions. With respect it is quite undesirable to invoke public policy as between the constituent states of a federation, and in the High Court of Australia it has been clearly stated that refusal to grant recognition to a judgment of a sister state on grounds of public policy is contrary to the full faith and credit clause in the constitution.[16] Ultimately, there are two alternatives : to adopt the view of Fullagar, J., or to hold with the majority in the *Williams Case* that full faith and credit depends upon compliance with the common law rules respecting jurisdiction. Both views have their advantages and disadvantages. But it is submitted that there is much to be said for the view of Fullagar, J., in *Harris* v. *Harris* that to refuse to give full faith and credit to the decree of a sister state would do violence to the plain meaning of the words of the Commonwealth Act.

[16] *Merwin Pastoral Co. Pty., Ltd.* v. *Moolpa Pastoral Co. Pty., Ltd.* (1933), 48 C.L.R. 565, 577, 587–8.

PUBLIC INTERNATIONAL LAW

A SELECT BIBLIOGRAPHY OF ENGLISH WORKS, 1918–1948 [1]

By A. R. Hewitt, Assistant Librarian, Hon. Society of the Middle Temple

In spite of two world wars within a generation, belief in the future of law in the regulation of international relations remains firm. The formulation and interpretation of international law receives constant attention from writers of all nations and the literature on the subject is, in consequence, extensive. The contribution by English writers is considerable and this bibliography consists of a selection of the more important works published since the termination of the first world war. Much has been written on the various branches of international law but it has been necessary to confine this survey, with some important exceptions, to those works devoted to the subject as a whole. The literature mainly or exclusively on the League of Nations has also been excluded.

Of the standard works the most important is the late Professor L. Oppenheim's *International Law: a treatise*, in two volumes (Vol. 1, *Peace*, Vol. 2, *Disputes, War and Neutrality*), sixth edition by Professor H. Lauterpacht (1944–7, Longmans, Green, £5). This work, originally written by a writer of international standing, and edited, in its later editions, by another of similar status, is regarded as the best of its kind. Other leading textbooks are the late W. E. Hall's *Treatise on International Law*, eighth edition by Professor A. Peace Higgins (1924, Oxford University Press, 36s.); *International Law* by the late Earl of Birkenhead (F. E. Smith), sixth edition by R. Moelwyn Hughes (1927, Dent, 21s.); and the late T. J. Lawrence's *Principles of International Law*, seventh edition by Professor P. H. Winfield (1923, reprint 1930, Macmillan, 18s.). Wheaton's *Elements of International Law*, although originally by an eminent American Jurist, has been through six English editions and during the process it has been systematically rewritten by English authorities on the subject. For this reason it is included in this bibliography. The last complete edition is the sixth, by Professor A. B. Keith (2 vols. 1929, Stevens & Sons),

[1] With acknowledgments to the *British Book News*, No. 91, March, 1948, by courtesy of the British Council.

but a seventh edition of the second volume dealing with War, by the same editor, appeared in 1944 (50s.). These works cover the whole field of international law and are the established authorities. A comprehensive work in the course of publication is that by Georg Schwarzenberger, *International Law*, Volume 1 of which was published in 1945 (Stevens & Sons, 60s.). It is to be completed in three volumes. This work will be referred to again later in the bibliography.

Of the smaller, or introductory, works on the subject the most recent are J. G. Starkie's *Introduction to International Law* (1947, Butterworth, 25s.) and G. Schwarzenberger's *Manual of International Law* (1947, Stevens & Sons, 25s.). Starkie's work is a short, practical and elementary textbook. The purpose of Schwarzenberger's *Manual* is to provide a synopsis of the subject in which is considered that part of classic international law which has survived the last world war and the legal significance of the collective efforts made to establish the rule of law between nations. ' Study outlines ' have been included to assist students in obtaining, by their own efforts, a more detailed acquaintance with the various branches of international law. It is a valuable aid to further research. J. L. Brierly's *The Law of Nations: An Introduction to the International Law of Peace* (third edition, 1943, Oxford University Press, 7s. 6d.) although limited to one aspect of the subject, namely Peace, is of value to the novice or layman who has an interest in learning in outline the system of legal relations between states. Finally, T. J. Lawrence's *Handbook of Public International Law*, eleventh edition by P. H. Winfield (1938, Macmillan, 3s. 6d.), is a brief survey of the subject intended chiefly for those with little time for minute investigation.

Development of International Law by Sir G. G. Butler and S. Maccoby (1928, Longmans, Green, 25s.) is historical and deals with the growth of international law. Believing that changes in international law have been ultimately an expression of changes in the state system of the world, and in the practice of the nations, the authors adopted an unusual method in their treatment of the subject by dividing history into fixed periods, selecting a central theme at each stage, and treating it in the light of history and law. Another important work on ' development ' is Lauterpacht's *Development of International Law by the Permanent Court of International Justice* to which reference will be made later in this bibliography.

Three collections of lectures and papers deserve special mention. The first, A. P. Higgins's *Studies in International Law and Relations* (1928, Cambridge University Press, 15s.) is a series of

lectures and articles on various aspects of international law, two of which are of particular value, namely, the responsibility of each member of a democratic community in connection with conduct of foreign affairs, and risks to international relations involved in disputes about matters not regulated by rules of international law. The second work is *Chapters on Current International Law and the League of Nations* (1929, Longmans, Green, 25s.) by Sir John Fischer Williams who experienced so much international law in actual practice. It consists of reprints of lectures, papers and articles together with three new chapters. The third is *Lectures on International Law* (1933, Sweet & Maxwell, 30s.) by the very distinguished writer Sir Thomas Erskine Holland. Most of his work was published towards the end of the nineteenth and the beginning of the twentieth centuries. Towards the end of his life he designed the publication of a comprehensive work founded on his lectures, but he did not live to see it—he died in 1929. This volume, edited by T. A. Walker and W. L. Walker, contains thirty-three lectures on various aspects of international law, chiefly the rights of states, war and neutrality.

Professor H. Lauterpacht's *Private Law Sources and Analogies of International Law, with special reference to International Arbitration* (1927, Longmans, Green, 25s.) vindicates the practice of international tribunals of resorting to rules and conceptions of private law when international law is not sufficiently developed to supply a solution. In T. Baty's *Canons of International Law* (1930, Murray, 21s.) the author specifies four characteristics which rules of international law should possess—simplicity, certainty, objectivity and elasticity, which he evolves into canons and under which he ranges all sections of international law. It is a controversial work which merits careful study. Another work of a general character is Sir John Fischer Williams's *Aspects of Modern International Law* (1939, Oxford University Press, 5s.), being reflections on the basic problems of the subject, written more for the inquiring layman than the lawyer.

The place of the British Commonwealth and Empire as such in the practice and development of international law is specially dealt with in several works, the most important of which is, perhaps, P. J. N. Baker's *Present Juridical Status of British Dominions in International Affairs* (1929, Longmans, Green, 21s.) in which he deals with the development of the British Dominions as separate entities in international law and the recognition of their international status. *Great Britain and the Law of Nations; a selection of documents*, by H. A. Smith (1932–35, 2 vols., Staples Press, 20s. each) is a collection of documents illustrating the view of the

Government of the United Kingdom upon matters of international law, with explanatory notes. It is a valuable contribution to the study of the subject. Reference has already been made to Schwarzenberger's *International Law*, Volumes 2 and 3 of which will deal with international law as applied in British State practice and by the courts within the British Commonwealth and Empire. M. F. Lindley's *Acquisition and Government of Backward Territory in International Law* (1926, Longmans, Green, 21s.) although a treatise on the law and practice relating to Colonial expansion generally, includes considerable material dealing with the British Empire. *Nationality within the British Commonwealth of Nations* by E. F. W. G. Van Pittius (1930, Staples Press, 10s.) should also be mentioned, as it indicates the international consequences of legislation relating to British nationality and the problems arising from the inauguration of the mandatory system. The most adequate treatment of the subject of nationality, however, is in J. M. Jones's *British Nationality Law and Practice* (1947, Oxford University Press, 30s.) which places it within its proper framework of international law. In compiling this valuable work the author has had direct access to papers and documents in the Home Office and Foreign Office which deal administratively with the problem.

The best collection of documents on international law issued under British auspices are the volumes of *British and Foreign State Papers*, compiled and edited in the Librarian's Department of the Foreign Office and issued by His Majesty's Stationery Office. The collection contains treaties, conventions, notices, orders, decrees, etc. of all countries. It commenced publication in 1841 and the last volume to be issued (Vol. 137, published in 1939) covers the year 1934. Publication will doubtless be resumed in the near future. The more important documents on specific aspects of international law are also to be found in the appropriate textbooks. Reference has already been made to Smith's *Great Britain and the Law of Nations*, which contains a valuable collection of documents and papers.

Reporting of international law cases is adequately covered by the *Annual Digest and Reports of Public International Law*. Each volume actually covers two or three years and consists of selections from decisions of international and national courts and tribunals. The first volume (1919–1922) was published in 1932 (Longmans, Green) and the last (1941–1942) in 1945 (Butterworth, 55s.). A supplementary volume, covering the years 1919–42 and containing a consolidated table of cases and indices for the whole series, was published in 1947 (Butterworth, 55s.). The earlier volumes were edited by Sir John Fischer Williams and those since 1930 by

Professor H. Lauterpacht. In addition to this series an important collection is that by Pitt Cobbett, *Leading Cases and Opinions on International Law* (Sweet & Maxwell), Vol. 1, *Peace* (Sixth edition, 1947, 37s. 6d.) and Vol. 2, *War and Neutrality* (Fifth edition, 1937, 27s. 6d.), both editions by W. L. Walker. Reference should also again be made to Schwarzenberger's *International Law*, the first volume of which contains a full account of international law as applied by international courts and tribunals and is written in a style familiar to Anglo-Saxon lawyers, *i.e.*, the inductive and not the deductive method. It may not be out of place here to mention several works devoted to the former Permanent Court of International Justice. The best known is that by A. P. Fachiri, *The Permanent Court of International Justice* (Second edition, 1932, Oxford University Press, 21s.), which deals with its constitution, procedure and work. Professor H. Lauterpacht's *Development of International Law by the Permanent Court of International Justice* (1934, Longmans, Green, 6s. 6d.) examines the principal tendencies which have distinguished the work of the Court and stresses the importance of the Court in international law. Much valuable material will also be found in *Information on the World Court, 1918–28* (1929, Allen & Unwin, 10s.) by J. W. Wheeler-Bennett and M. Fanshawe.

Although this survey has, of necessity, been confined generally to works dealing with the subject as a whole, it would not be complete without referring briefly to some standard works on certain specific branches of international law. Mandates provide material for two well-established works, namely, J. Stoyanovsky's *The Mandate for Palestine* (1928, Longmans, Green, 28s.) and Norman Bentwich's *The Mandates System* (1930, Longmans, Green, 15s.). Van Pittius's *Nationality*, to which reference has already been made, also deals with problems arising from the system of mandates. International rivers are dealt with in G. Kaeckenbeeck's *International Rivers: A Monograph based on Diplomatic Documents* (Grotius Society Publications, No. 1, 1918, Sweet & Maxwell, 15s.) and H. A. Smith's *Economic Uses of International Rivers* (1931, Staples Press, 13s. 6d.). The subject of treaties has been dealt with comprehensively in *Law of Treaties—British Practice and Opinions* (1938, Oxford University Press, 30s.) by Sir Arnold D. McNair, an international authority. This book states the practice of the United Kingdom on the conclusion and interpretation of treaties, the scope of their operation and their termination and modification. Naval warfare and sea law have been adequately covered in works by J. A. Hall, *Law of Naval Warfare* (Second edition, 1921, Chapman and Hall, 30s.) and by A. P. Higgins and C. John Colombos,

International Law of the Sea (Second impression, 1946, Longmans, Green, 42s.). Prize law is the subject of an authoritative work by C. John Colombos, *Treatise on the Law of Prize* (Second edition, 1940, Grotius Society, 21s.). Reference should also be made to a standard work on diplomacy, namely, Sir E. Satow's *Guide to Diplomatic Practice*, third edition by H. Ritchie (1932, Longmans, Green, 36s.).

Of the serial publications and collections of works covering the whole field of international law one of the most valuable is the *British Year Book of International Law*, now issued under the auspices of the Royal Institute of International Affairs by the Oxford University Press, the first volume of which appeared in 1920. The last volume issued is that for the year 1946, published in 1947 (42s. 6d.). It contains articles and notes, both historical and topical, and a bibliography of books and articles on international law and kindred subjects which is of particular value.

The Grotius Society's *Transactions* consist of valuable papers read before the Society on Problems of Peace and War which are published annually for the Society by Longmans. The first volume appeared in 1916 and the latest issue is that for the year 1947 (Vol. 32, 25s.).

A new series of publications, the *Cambridge Studies in International and Comparative Law*, under the general editorship of Professor H. C. Gutteridge, Professor H. Lauterpacht and Sir Arnold D. McNair, was launched in 1946 (Cambridge University Press). The first volume was by Professor H. C. Gutteridge, entitled *An Introduction to the Comparative Method of Legal Study and Research* (1946, 12s. 6d.). J. Mervyn Jones's *Full Powers and Ratification: a Study in the Development of Treaty-making Procedure* was the second work in the series (1946, 12s. 6d.). The latest volume is Professor H. Lauterpacht's *Recognition in International Law* (1947, 25s.), which is the fullest and most up-to-date treatment in all its aspects of this important subject that is available.

Another series of books to which reference should be specifically made is that issued by Longmans, Green, entitled *Contributions to International Law and Diplomacy*, originally issued under the general editorship of Professor L. Oppenheim and later Sir Arnold D. McNair. The majority of the works published in the series have already been mentioned in their appropriate sections; they are the Annual Digest of Public International Cases; Baker's Juridical Status of the British Dominions; Bentwich's Mandates; Butler and Maccoby's Development of International Law; Lauterpacht's Private Law Sources; Satow's Diplomatic Practice; Stoyanovsky's Mandate for

Palestine; and Williams's Current Chapters on International Law. Three not previously mentioned are: J. W. Garner's *International Law and the World War* (1920, 42s.), the author of which was an American jurist; L. Oppenheim's *League of Nations and its Problems* (1919, 6s.), a collection of three lectures; and R. F. Roxburgh's *International Conventions and Third States* (1917, 7s. 6d.), a monograph. Unhappily many of the volumes in this series are now out of print.

During the period under review this journal, the *International Law Quarterly: the British Journal of Public and Private International Law* (Stevens & Sons, 30s. per annum) made its first appearance. It commenced publication in 1947 and it is devoted exclusively to international law. The honorary joint editors are Professor G. C. Cheshire and Dr. C. John Colombos, and Sir Cecil J. B. Hurst is Chairman of the Editorial Committee. The *Journal of Comparative Legislation and International Law* is, of course, well established—it first appeared in 1896.

In view of the fact that this bibliography is confined to British works, mention has not been made of the publications of the Carnegie Endowment for International Peace (Division of International Law), Washington, although many of them are printed and issued in England by the Oxford University Press. They include reprints of the classics of international law, with commentaries, as well as current works on international law and allied subjects. They are, of course, invaluable to the study of the subject and should not be overlooked.

To conclude this survey it is proposed to mention briefly certain works which 'defend' international law and which deal with its future. During and after the 1914–18 World War international law passed through a period of decline and the *Renascence of International Law* by Manfred Nathan (Grotius Society Publications, 1925, Sweet & Maxwell, 10s.) was written on the problems then to be solved and on the prospects of survival. Professor H. Lauterpacht, in his *Function of Law in the International Community* (1933, Oxford University Press, 25s.) demonstrates that international law, properly understood and applied, is capable of covering the whole field of international relations. Professor P. H. Winfield's little book, *Foundations and Future of International Law* (1941, Oxford University Press, 3s. 6d.), written for the layman, deals with peace, war, neutrality and the future prospects. Considerable scepticism was again felt during the late war as to the efficiency of international law and G. Schwarzenberger's *International Law and Totalitarian Lawlessness* (1943, Cape, 10s. 6d.) was written to refute

this attitude, as was Professor J. L. Brierly's *Outlook for International Law* (1944, Oxford University Press, 6s.). Finally, in G. W. Keeton and G. Schwarzenberger's *Making International Law Work* (Second edition, 1946, Stevens & Sons, 12s. 6d.), the main task of the authors is to define the place of international law in world security. It provides a social background to the subject and deals with the functions of international law and international morality, the failure of the League experiment and the prospects for international law in future.

EDITORIAL NOTES

SUMMER COURSE AT THE ACADEMY OF INTERNATIONAL LAW AT THE HAGUE

SINCE its opening on July 14, 1923, the Academy of International Law has ranked among the foremost institutes for higher international studies and until the interruption caused by the recent war it had enjoyed increasing success from year to year. It resumed activity in the summer of 1947, instantly regaining its former position.[1]

The Academy offers a unique opportunity for advanced work in international law. The instruction is designed to supplement university training and is highly authoritative. Both the faculty and the student body of the Academy are truly international, being composed of professors of recognised standing and especially qualified students from many countries.

The provisional programme of this year's summer course is given below. The courses have hitherto covered the months of July and August in two equal periods, but this year, exceptionally, the course will begin on July 12 and last four to five weeks.

Provisional Programme

Historical Development of International Law.

The Rules of War in the work of the Captains of the 16th Century (5 lessons), by M. l'Ancien Bâtonnier Gardot.

The Revolution of 1848 and International Law (5 lessons). M. Paul Bastid, Membre de l'Institut de France, Ancien Ministre.

Principles of Public International Law.

The International Rule of Law (5 lessons). Professor Salvioli, of the University of Pisa.

International Rivers, the régime applied during the period between the wars (5 lessons). Professor Vosta, of the Charles University, Prague.

Representation in International Law (5 lessons). Professor A. P. Sereni, of Columbia University.

Juridical Aspects of Propaganda (5 lessons). Professor J. B. Whitton, of Princeton University.

[1] I.L.Q., Vol. 1, p. 210.

Private International Law.

Present Doctrinal Tendencies in Private International Law (5 lessons). Professor J. de Yanguas Messia, of Madrid University, Member of the Institute of International Law, former Minister of Foreign Affairs of Spain.

Conflict of Authorities in Private International Law (5 lessons). Professor J. P. Niboyet, of the University of Paris.

Administrative, Economic and Financial Law.

The Bretton Woods Agreements and the institutions resulting therefrom (5 lessons). M. Gutt, former Finance Minister of Belgium, Director of the International Monetary Fund and of the International Bank for Reconstruction.

International Organisation.

Principles of International Constitutional Law (5 lessons). Professor Pitman B. Potter, Grozier Professor of International Law, Washington.

The Majority Principle in International Organisations (5 lessons). Baron Nolde.

Problems of Codification and Development of International Law. Mr. Yuen-li Liang, Director of the Division for Development and Codification of International Law, United Nations.

The Juridical Clauses of the Peace Treaties (5 lessons). Mr. G. G. Fitzmaurice, of the Foreign Office Legal Department.

Displaced Persons and International Law (5 lessons). Professor E. Kent-Nicolussi, of the University of Innsbruck.

THE INTERNATIONAL COURT IN SESSION, FEBRUARY 20–MARCH 5, 1948

Before proceeding to the hearing of the Corfu Incidents Case the court heard the swearing-in of two of the judges, M. Alvarez of Chile, and M. Daxner, the Albanian judge *ad hoc*. The ceremony was followed by speeches of greeting to the court by Sir Hartley Shawcross, Attorney-General, and by M. Kahreman Ylli, Albanian agent. Sir Hartley said that '. . . a court constituted on the basis of the Statute of the International Court is rightly regarded as the custodian of the hopes and conscience of mankind . . . it is the supreme embodiment of law and justice in international life and stands for the rule of law between States without which civilisation cannot endure'. M. Ylli followed, stating that 'We consider this court must not administer law as an abstract notion without considering realities and without regard for the effect of the application of law in international relationships. . . . The

court has a wider significance as one of the principal organs of the United Nations '.

The Albanian agent, opening the case, maintained that although his Government abided by the Security Council resolution of April 9, 1947, the unilateral action of the U.K. Government in making application to the Court at its own initiative was a flagrant violation of the principles of international law in general and of the court's Statute in particular. Albania had signed no treaty or convention with the British Government agreeing to submit the dispute to The Hague Court. The principle of sovereignty demanded that no State be brought before the court without its consent. Albania had not signed the optional clause under article 36 of the court's Statute and could not, therefore, be brought before the court without special agreement. In fact, when the British application was received the Albanian Government was free and entitled to ignore it completely on the grounds that it was null and void. Albania nevertheless was willing to accept the court's jurisdiction and was ready to proceed with the British Government for the drafting of a special agreement. In this dispute, said M. Ylli, there must be neither applicant nor respondent : both parties must be on a complete equality.

Dr. Vochoc, Professor of International Law at Prague, counsel for Albania, following the agent, elaborated the Albanian Government's objections, basing his plea mainly upon an interpretation of articles 25 and 36 of the United Nations Charter and upon article 36 of the Statute of the International Court. Dr. Vochoc pointed out that according to article 36 of the United Nations Charter, the Security Council only makes recommendations as to the procedure for settling international disputes and that such disputes should be referred to the court by the *parties* in accordance with the provisions of the Statute of the court. Consequently, said the Albanian representative, the question of compulsory jurisdiction does not arise and the case should have been submitted not unilaterally by Great Britain to the court, but jointly by the *two parties as equals*. In addition, article 36 of the Statute of the International Court states that the ' jurisdiction of the court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force '. Two points, says the Albanian counsel, arise from this article : firstly, the fact that the case has not been referred to the court by the *parties*, but by the United Kingdom alone, and secondly, that the phrase ' and all matters specially provided for in the Charter ' was ' stillborn ', since the Statute in fact was drafted prior to the United Nations Charter and the latter did not

include ' special provisions '. Furthermore, under article 25 of the Charter quoted by the United Kingdom Government in its application to the International Court dated May 22, 1947, ' the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter '. It was argued by the Albanian counsel, however, that the Security Council did not take a *decision* on the case, but made only a *recommendation*, which is therefore not finally binding. Although Albania had accepted obligations equivalent to those of a full member of the United Nations, the absence of a Security Council *decision* substantiated her case. Dr. Vochoc went on to examine the jurisprudence of the Permanent Court of International Justice to demonstrate the essential difference between cases brought before the court on a basis of ' special agreement ' and those brought by ' application '. It was only permissible to proceed by application in a case where there was compulsory jurisdiction. If an application was presented in any other case it was null and void. In the case of the Corfu Channel dispute there had been no previous agreement between the United Kingdom and Albanian Governments to present their case jointly. Dr. Vochoc followed with his interpretation of the Security Council's recommendation, repeating his emphasis on the word *parties*, and that there must always be *two parties* presenting a case according to the articles of the Statute and the United Nations Charter.

Albania's counsel was followed immediately by Sir Hartley Shawcross, Attorney-General and counsel for the United Kingdom, who opened by stating that if, as he learned from Dr. Vochoc, it was a question of national prestige which was uppermost in the minds of the Albanian representatives, then, as far as the United Kingdom was concerned, there should be no difficulty in reaching a solution to Albania's preliminary objections. If, said Sir Hartley, the Albanians were genuinely desirous of submitting the dispute to the court, a few hours only would be necessary to come to a special agreement and the two parties could subsequently present the case jointly to the International Court at such a date as the President should designate. He suggested that the Albanian agent should communicate his views on this suggestion by Monday morning, March 1. In case the Albanians might be unwilling to agree to this proposal, Sir Hartley said that he would meanwhile proceed with his reply to the preliminary objections.

Counsel for the United Kingdom told the court that the original British application to the International Court dated May 22, 1947, left open to the Albanian Government three possible courses of action—firstly, to ignore the whole thing if they thought it was

invalid; secondly, to appear before the court and contest the court's competence; and thirdly, to appear and submit the case to the court in spite of objection to the way in which the court had been seized. Turning to the Albanian Government's letter of July 2, 1947, addressed to the registrar of the court, Sir Hartley Shawcross interpreted its contents as a choice of the third course and as an unequivocal acceptance of the court's jurisdiction in this case.

Sir Hartley Shawcross continued by quoting from the summary records of the United Nations Security Council's Committee on Membership to show that the Security Council regarded its recommendation to refer the Corfu Channel dispute to the International Court as not only morally but legally binding. From the proceedings of the 16th, 17th and 18th meetings of the Membership Committee, United Kingdom counsel sought to show that when Albania's application for membership of the United Nations was under consideration, the text of the Albanian letter to the International Court of July 2, 1947, was used by Albania's sponsors in the committee as evidence that she would fulfil her obligations as a member of the Organisation. The text of that letter had been telegraphed from The Hague after questions had been asked in the committee as to what action had been taken by Albania following the Security Council's recommendation regarding the Corfu Channel dispute. Sir Hartley Shawcross also quoted from the jurisprudence of the Permanent Court of International Justice. Referring to the minutes of the proceedings for the revision of the Rules of Procedure of the Permanent Court dated March 11, 1936, he argued that the Permanent Court had kept the door open for a State to give subsequent consent to the jurisdiction of the court even when it had been cited before the court without previous agreement. Any possible defect in his original application was cured in this manner by the Albanian letter of July 2, 1947.

No reply had been received to the U.K. offer of a special agreement when the court reassembled on March 1, and Sir Hartley Shawcross went on to analyse the implications of article 25 of the United Nations Charter. He set out to demonstrate that this article applies to the Charter as a whole. In support of his argument he quoted from the text of the Charter and replied to Dr. Vochoc's arguments drawn from preparatory works by other quotations to prove that in the preliminary discussions at San Francisco those who drafted the Charter were agreed on this interpretation. Sir Hartley drew the conclusion that article 25 applied not only to 'decisions' of the Security Council but also to 'recommendations'. Articles 27 and 18, dealing with voting procedure,

he said, also bore out this point. Albania was therefore obliged to submit to the jurisdiction of the court. He went on to quote extensively from the minutes of the meetings of the Security Council for April 3 and 9, 1947, to demonstrate that all the representatives on the Council were wholly convinced at that time that its 'recommendation' was binding on the parties to whom it referred and imposed obligatory jurisdiction on those parties as far as this particular case was concerned.

The British case was then taken up by Mr. W. E. Beckett, K.C., Legal Adviser to the British Foreign Office. Mr. Beckett argued on the rules of interpretation of treaties with special reference to article 25 of the United Nations Charter. The terms of a treaty, that is, the actual words employed, should be interpreted, he said, according to current and natural usage. Furthermore, no terms should be taken out of their context; their meaning in a treaty should be taken in the light of the meaning and intention of the treaty as a whole. Finally, every treaty should be interpreted so as to give that treaty efficacity, 'ut res magis valeat quam pereat'. He substantiated his arguments by substantial quotation from the jurisprudence of the Permanent Court of International Justice. Mr. Beckett concluded his statement with further quotations from the jurisprudence of the Permanent Court of International Justice with special reference to that court's decisions on the use of preparatory works. He referred, inter alia, to Judgment No. 9 of the Permanent Court in which occurred the statement '. . . there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself', and argued in addition that preparatory work should never be admitted in the interpretation of unilateral treaties to which States can accede which were not parties to the preparatory work.

In this context he was replying to the liberal use of quotation from the preparatory works of committees at the San Francisco Conference made during the Albanian statement by Dr. Vochoc. Mr. Beckett emphasised that the U.K. arguments in the case must be taken as separate and alternative. He went on to assert that even if article 25 of the Charter does not apply to all recommendations it must be interpreted so as to include at least some of the recommendations made by the Security Council under Chapters VI and VII—those dealing with the pacific settlement of disputes and with threats to the peace and acts of aggression. He distinguished for this purpose between recommendations as to terms of settlement and recommendation as to methods and procedures of settlement.

Finally he argued that the court had jurisdiction in the case by virtue of the words in article 36 of its Statute, 'cases specially provided for in the Charter of the United Nations'. No words similar to these appeared in the Statute of the Permanent Court and they must have been intended to have some application. In fact they applied to cases such as this where, under the powers conferred upon it by the Charter, and in particular by article 36, the Security Council made a recommendation for reference to the court of a dispute likely to endanger international peace. In such a case the court had jurisdiction once the recommendation was acted upon by one or both of the parties in a manner permitted by the Statute of the court.

After the conclusion of Mr. Beckett's statement, Mr. Kahreman Ylli, Albanian agent, asked the court for an adjournment until Monday, March 8. The president drew the attention of the court to the difficulties of extending the hearings over too long a period. The court re-assembled on Friday, March 5, when short rejoinders from Albanian and British counsel were heard.

Since the opening of the Corfu Channel case before the International Court both the Albanian and the British counsel have based their cases in the main on the interpretation of the Charter of the United Nations. This is one of the first occasions on which the Charter has been subject to legal scrutiny in relation to a particular legal dispute and the arguments which were heard take on an importance of even greater breadth than has perhaps been generally realised.[1]

TREATY SIGNED AT BRUSSELS ON MARCH 17, 1948, BETWEEN BELGIUM, FRANCE, LUXEMBOURG, THE NETHERLANDS AND THE UNITED KINGDOM

This is a short treaty and the full text appears elsewhere in this number of the *Quarterly*.[2] This is not the place to appreciate the political aspects of the Treaty. On the other hand, there are certain legal and quasi-legal points which may be of interest to international lawyers.

One such point is that, in the negotiations, Belgium, the Netherlands and Luxembourg formed a single delegation described as the 'Benelux Delegation', which negotiated with the delegations of the United Kingdom and France. This is a sign of the carrying into the political field of the customs union between these three countries

[1] The judgment of the court is given in full on pp. 68–92, *infra*.
[2] Selected Official Documents, p. 150, *infra*.

which has already led to their acting as a unit in many international economic matters. Nevertheless, there is no formal political union between the countries and consequently as signatories they appear as, and are, three separate contracting parties.

The essence of the treaty is perhaps best given in the last paragraph of the preamble which describes it as one for ' collaboration in economic, social and cultural matters and for collective self-defence '. The provisions with regard to collective self-defence are found in articles 4 to 6 and in a part of article 7. They are also referred to in paragraphs 5 and 6 of the preamble. Article 4 is a simple, straightforward provision for mutual aid in case of an armed attack by an aggressor in conformity with the provisions of article 51 of the Charter, an article which has assumed so much importance in recent times in view of the inability of the Security Council to act under Chapter VII of the Charter in any case where the five Great Powers are not unanimous. The article applies to attack by any Power and it is to be gathered from its provisions that the obligation is several, or joint and several, and not simply joint. It is to be noted that it only applies to cases where the attack takes place in Europe and therefore, for instance, has no application to, say, troubles which the Netherlands may have in Indonesia or which the United Kingdom might have in Latin America or in Asia or Africa. On the other hand, it applies to any attack in Europe, and Gibraltar and Malta are in Europe, and therefore would include an attack on U.K. forces in, say, Germany or Austria.

Article 5 is a safeguard for the supremacy of the Charter and for action by the Security Council where the latter is able to take it.

Article 6 is a declaration by each contracting party that there is no conflict between the provisions of this treaty and any other treaty which it has concluded. There is no subordination of this treaty to any previous treaty or vice versa, but each High Contracting Party has satisfied itself and declared that there is no conflict between this Treaty and any other engagement into which it has entered. Obviously the Treaty of Dunkirk and the Treaties of Alliance of the U.K. and France with the U.S.S.R. spring to the mind in this connection.

From article 7 we see that, though the actual guarantee of assistance only applies to attacks in Europe, there is to be consultation, through the medium of the important Consultative Council which is to be set up between the High Contracting Parties, in the case of a menace to peace arising anywhere. There is also a reference in this article and in the sixth paragraph of the preamble to a renewal by Germany of an aggressive policy. The express

mention of Germany in this connection has in view the provisions of article 107 of the Charter (sanctioning action in relation to an ex-enemy State taken as a result of the recent war by the Governments having responsibility in relation to the ex-enemy State) and the provisions of article 53 of the Charter which, by way of exception to the ordinary rule with regard to regional arrangements, permit enforcement action against an ex-enemy State without the authority of the Security Council if the ex-enemy State renews an aggressive policy. On the other hand, these references to Germany should not be taken as representing the only attitude of the parties to the Brussels Treaty towards Germany, as to which a little more will be said hereafter.

Articles 1, 2 and 3 relate to collaboration in the economic, social and cultural spheres, and they should be read with paragraphs 3 and 4 of the preamble. All these articles are statements of an intention to collaborate. The actual collaboration has to be worked out by detailed arrangements and therefore these articles are in the nature of agreements to agree. The special organ of the five High Contracting Parties for this purpose is the Consultative Council which is provided for in article 7, but it must not be thought that all the collaboration will be worked out in that council. For instance, in the economic sphere it is clear, amongst other things, that European economic recovery which is specially mentioned in the preamble will be largely dealt with through the machinery recently set up in Paris in which sixteen countries are co-operating, and the second paragraph of article 1 expressly provides that the co-operation of these five Powers through the Consultative Council is not to duplicate or prejudice the work which is done through other economic organisations in which the High Contracting Parties participate. Similarly, under article 2, which deals with the social sphere, the collaboration is to take place inside the various specialised agencies (such as, for instance, the I.L.O.) as well as directly between the five States. There is a hint in this article of arrangements between the five States under which nationals of one country which have gone to work in another country will enjoy the benefits of the social security legislation of the latter. Similarly, article 3 in the cultural sphere must be held (though it does not say so) to envisage collaboration within UNESCO as well as through the bilateral cultural conventions which are now being concluded and other arrangements.

Article 9 provides for accession to the present Treaty by any State inside or outside Europe. To bring about an accession under this article, the five signatory Powers have to agree to invite another country to accede and it is specially envisaged that another

country may accede under conditions, for instance it might accede to part though not the whole of the Treaty. It might accede to the collective security provisions and not to the social or economic provisions, or vice versa, or other special conditions might be made. On these conditions not only would the five signatories have to agree but also the State which was acceding. There is much latitude here in bringing about the aim set out in the seventh paragraph of the preamble of associating progressively other States inspired by the same ideals and animated by the like determination. Moreover, it is not only by means of accession to the Treaty with or without conditions that this association with other States might take place. There is nothing to prevent the inclusion of a regenerated Germany in this association.

Other points to be noted are the important declarations in paragraphs 1 and 2 of the preamble which refer to fundamental human rights, the principles of democracy, personal freedom and political liberty, the rule of law and constitutional traditions. It is most significant and important that these things appear at the very beginning of the preamble. The High Contracting Parties are in effect stating that these things are the very essence of the matter. Their common heritage in these matters is as much or more than any other matter the real link between them. Without a common faith in these things, any association must be one of expediency only and therefore not an association which can be continued for fifty years, the period specified in the present Treaty. One recalls the words of Professor de Visscher in his paper to the Institute of International Law that these fundamental rights and freedoms are at once the bulwark against tyranny at home and against a policy of aggression abroad.

Article 8 is of particular interest to lawyers because here the High Contracting Parties make the arrangements for deciding disputes between each other. They commit themselves to refer all legal disputes to the International Court of Justice for the whole period of the Treaty, subject only to such reservations as each of them have already made when accepting the optional clause and to the extent that in any particular case the State concerned will wish to insist on such reservation. All the five countries have in fact accepted the optional clause, some of them making certain reservations which are not of very wide scope. However, as things now stand any one of them can terminate its acceptance of the optional clause after the expiry of certain periods which are in no case very long. Further, after the expiry of these periods they could at present, if they accepted the optional clause again, insert new reservations. They may still do this as regards the world in general,

but under this Treaty, as between each other, they are bound by the optional clause for fifty years and can make no new reservations though they can drop the reservations which they have already made. This is a striking declaration of faith in the court and in the rule of law in international affairs. There are, however, other disputes which cannot be settled through the medium of the court. They are cases where there is no dispute as to the respective legal rights of the parties but where one of them finds the present legal position unsatisfactory or intolerable and in fact is seeking to bring about a change in the existing legal position. This is not a matter for a court but in the absence of an international legislature these form a class of disputes for which some machinery of discussion and settlement is necessary. The Charter of the United Nations specifies various modes of settlement. In this Treaty conciliation has been selected, though the Treaty itself does not attempt to specify the details of the conciliation machinery. The fourth paragraph contains an important provision where, as will so often be the case, the dispute is a mixed one. There may be at one and the same time a dispute as to the actual legal position and a desire to change it. In this case it is provided that any party to a dispute shall have the right to obtain a decision of the court on the existing legal position before conciliation takes place if that party should wish to do so. It is well that some provision in the case of mixed disputes has been inserted : otherwise in the case of a mixed dispute one party might claim conciliation should take place first and the other party that judicial decision should take place first. This paragraph in fact maintains a right, which exists already by reason of the acceptance of the optional clause by all the High Contracting Parties since any one of them can bring a legal dispute before the court at any time. In most cases, moreover, it is difficult in a dispute of a mixed character for the element of compromise which is the essence of a settlement by conciliation to operate while the parties are still at issue as to their legal rights.

THE INTERNATIONAL LAW COMMISSION

The resolution of the General Assembly of November 21, 1947,[1] which approved the recommendation of the Sixth (Legal) Committee for the establishment of an International Law Commission, marks an important preliminary step in the implementation of article 13 (1) of the Charter of the United Nations.

[1] 123rd Plenary Meeting of the G.A.—A/PV/123, p. 156.

The movement for the codification of international law which had been in ' suspended animation ' for almost twenty years since the failure of the Hague Conference of 1930, has now received a fresh impetus. A new standing commission has been set up to assist the General Assembly in the performance of this task. This body is to consist, when the election of its members has taken place at the third session of the General Assembly in 1948, of international jurists of recognised competence, who will act in their individual capacities and not as governmental representatives. They are appointed for a fixed term but on a part-time basis, and in this respect the nature of their service differs from that of the judges of the International Court of Justice, who have to devote themselves to full-time service. An important share of the preparatory work will inevitably fall on the secretariat of the United Nations, working under the direction of the International Law Commission, and with the co-operation of organisations throughout the world, devoted to the study of international law.

The recommendation in the original Report, of which Dr. Kaeckenbeeck, the eminent Belgian jurist, was rapporteur, was in fact approved to the effect that the International Law Commission should have wide powers of consultation with such national and international bodies. It went even further in connection with the formulation of the Nuremberg principles. In the resolution adopted by the General Assembly there is a provision which directs the International Law Commission—

(a) to formulate the principles of international law recognised by the Charter of the Nuremberg Tribunal and by the judgment of that Tribunal, and

(b) prepare a draft code of offences against the peace and security of mankind.

With regard to the preparation of a draft code of offences the General Assembly took the opportunity of reaffirming its resolution of December 4, 1946, declaring that genocide is an international crime for which guilty individuals and States alike must bear full responsibility.

The resolution also directs the International Law Commission to prepare a declaration of the rights and duties of States on the basis of the draft declaration submitted to the first session of the General Assembly by the Panamanian delegation.

It is as yet too early to predict the effect of the Commission upon international outlook but if the faith of those who have laboured to bring it into being is not misplaced there is every reason to hope that it may prove a powerful factor in the development and codification of international law.

Loss of Nationality of Enemy Aliens

In the recent case of *Lowenthal* v. *Att.-Gen.*[2] a German Jew resident in this country sought to overcome the disability imposed by section 18 (6) of the Patents and Designs Acts, 1907–46, on a national of a foreign State between which and His Majesty hostilities exist, from securing the extension of a patent under the Acts, on the ground that a decree of 1941 of the German Government had rendered him stateless. Basing himself on *The King* v. *The Home Secretary, ex p. L.*, [1945] K.B.D. 7, where the same decree was in question, Romer, J., held that the German decree could not be regarded by an English court as removing the disability attracted by enemy nationality and rejected the application.

Such would appear to be the only possible result. In the earlier case Viscount Caldecote excluded from recognition by English courts a change of nationality effected by a foreign decree ' in time of war ', using that phrase three times in the course of a brief judgment. Romer, J., did not emphasise that same consideration though he added the wider opinion that ' such disqualifications (*i.e.*, of an enemy alien) should be removed, if they were removed at all, by the Parliament of this country and not by the Government of a foreign State, and a fortiori a foreign hostile State '.

It may not be without value to stress the principle underlying both these judgments, though in passing it may be suggested with great respect that the second statement, read without the final rider, overstates the matter. The process of determining a person's nationality involves two stages. If the answer to the question ' is the person a British subject ? ' is by English law ' no ', then regard must be had to foreign law to discover with what nationality the person is clothed. This is the normal process in peace and in war. In peace a non-British subject is an alien; in war he is an allied, neutral or enemy national, as the case may be.

Now, in contradistinction to British Trading with the Enemy legislation, which makes *residence* in enemy territory the test of enemy status (so that, for example, as is well known, a neutral or British national may be an enemy alien for the purposes of the Act), the Patents and Designs Acts proceed on the principle of *nationality* and impose disabilities on ' subjects of a foreign State between which and His Majesty hostilities exist '. They thus oblige an English court to have regard to foreign law for a positive answer as to nationality. In effect, the two judgments under review look to foreign law so long as it is convenient and politic to do so, but not when the reverse is the case. This illogicality is carried over into

[2] Reported on p. 92.

Romer, J.'s statement that 'such disqualifications should be removed, if they were removed at all, by the Parliament of this country and not by the government of a foreign State. . . '. Surely if Parliament is to intervene at all, unless it be to abandon the general intendment of the Acts and the nationality test upon which they rest, it must be to declare, if that were necessary, what the judgments themselves have declared, that a nationality decree of an enemy State, removing, in the eyes of foreign law, the nationality of an enemy national resident in this country (who was such an enemy national in the eyes of English law by virtue of foreign law), will be excluded from operation here *in time of war.*

In the United States a similar position held true as a general rule.[3] Several Federal regulations expressly applied to stateless persons who were formerly of enemy nationality, and who by statutory provision remained in the same category as other aliens of their (former) nationality. The Rules of the War Damage Corporation, for example, declared null and void a policy of insurance against property loss or damage resulting from enemy action to the extent that such policy covered property owned by a national of Germany or Japan, and this provision was extended to stateless refugees by the Regulations of November 17, 1942, which in section 1 provided : 'As used herein the words "nationals of Germany or Japan" are intended to include nationals or former nationals of Germany or Japan, wherever resident, notwithstanding loss of their former citizenship pursuant to law or decree of either such country, and notwithstanding the filing of first papers manifesting an intention on the part of such persons to become citizens of the United States'. Similarly, though the German denationalisation decree was recognised as having effect abroad in *U.S. ex rel. Schwarzkopf* v. *Uhl*, 137 Fed. 2d 898 (C.C.A. 2d. August 18, 1943), where it was stated 'There is no public policy of this country to preclude an American court from recognising the power of Germany to disclaim Schwarzkopf as a German citizen', the court further stated that 'the cancellation of the citizenship of native-born German citizens would not exclude them from the application of the Alien Enemy Act, as they would remain "natives" of Germany'. As appeared in the same case, the U.S. Treasury Department had consistently made the following ruling under Executive Order 8389, of April 10, 1940, as amended : 'Any individual whose citizenship is cancelled or revoked or who is expatriated, or who endeavours to renounce or divest himself of citizenship under the laws or decrees of the government of any

[3] The matter is well treated in *Trading with the Enemy in World War II*, and supplement, by Dr. Martin Domke, to whom the present writer is indebted.

foreign country does not cease to be a national of such country merely by reason of such cancellation or revocation of citizenship, or such expatriation or divestment of citizenship'.

Australia, on the other hand, exempted stateless refugees of former enemy nationality from the restrictions imposed upon aliens of such nationality. The Australian National Security (Aliens Service) Regulations of February 3, 1942, r. 2, contained an express definition of refugee alien as 'an alien who has no nationality, or whose nationality is uncertain, or who is an enemy alien, in respect of whom the Minister of State for the Army, or a person authorised by that Minister to act on his behalf, is satisfied (a) that the alien was forced to emigrate from enemy territory on account of actual or threatened religious, racial or political persecution, and (b) that he is opposed to the regime which forced him to emigrate'.

Though, in general, we are on broader ground in considering the Australian Regulations than in considering the English Patents and Designs Acts, the allegiance tests indicated by (a) and (b) above in the Australian measures serve as a reminder of the underlying objective of all Trading with the Enemy legislation as well as of the special aspect of such more particular enactments as the Patents and Designs Acts, namely, economic warfare or at least economic self-protection. With this objective in mind, it is easier to perceive why in some cases nationality and in others residence may, as indicative of what may be called potential economic allegiance to the enemy, be the necessary cause of the imposition of disabilities upon an alien, in English or other domestic law.

A QUESTION OF LEGITIMACY IN PRIVATE INTERNATIONAL LAW (*re* BISCHOFFSHEIM)

In his recent edition of *Private International Law*, Professor Cheshire writes:

> 'There can be no doubt, according to the House of Lords in *Shaw* v. *Gould*[4] that when the question of legitimacy is pertinent to a claim under an English will it must be regarded as a matter of construing the will'.[5]

This represents a change of view, since in the previous edition the learned author contended that legitimacy was determined by the lex domicilii of the child, that is by the law of his father's domicile at the time of his birth.[6] In the third edition, persuaded by Welsh's powerful arguments,[5] he stated in unequivocal terms

[4] (1868), L.R. 3 H.L. 55.

[5] 3rd ed. (1947), p. 507. See also R. S. Welsh, 'Legitimacy in the Conflict of Laws', 63 L.Q.R. 65 *et seq.*, where the same view is brilliantly argued.

[6] 2nd ed. (1938), p. 376.

the view quoted above. At the same time, Cheshire does not consider that this is a desirable state of the law, and argues that questions of legitimacy should be determined by reference to the law of the domicile of origin, and should not necessarily depend upon the domestic English test of birth in lawful wedlock.

In *Re Bischoffsheim* [7] Romer, J., was not persuaded that *Shaw* v. *Gould* required him to come to the conclusion which Cheshire so positively asserts. The testator who presumably died domiciled in England bequeathed an interest in personalty to his granddaughter for life with remainder to her children. The granddaughter married for the first time in 1908, and there were two children of the marriage. After the death of her first husband, she married his brother in 1917 in New York. By English law this second marriage was void, though it was valid by New York law. Whether this marriage was valid, therefore, depended on the domicile of the parties at the date of the ceremony. But on the view which Romer, J., took it was not necessary to decide whether the parties at the time of the marriage had acquired a domicile in New York. There was one child of the union, a son, who was born in New York in 1920 at a time when both parents had acquired a domicile of choice in New York. The matter for decision was whether the son was a legitimate child of the testator's granddaughter so that he might take under the will.

Romer, J., held that the governing factor was the domicile of origin. Whether the child possessed the status of legitimacy was determinable exclusively by the law of the country in which his parents were domiciled at the time of his birth. This was New York, by the law of which he was legitimate. He must therefore be regarded as legitimate for the purposes of an English will. Romer, J., supported his view by reference to *Re Goodman's Trusts*,[8] and quoted from the judgment of Cotton, L.J., who emphatically asserted in that case that legitimacy was a question of status determined by the law of the domicile of origin. Again in *Re Andros* [9] Kay, J., stated that legitimacy was governed by the lex domicilii of the father at the date of the child's birth, Romer, J., stressed the point that Kay, J., did not deal with the case as a question of construction, but treated legitimacy as a matter of status, governed by the appropriate rules of law. Reference was made to *Birtwhistle* v. *Vardill* [10] as a special and anomalous rule that succession as *heir* to English land required the heir to be born

[7] [1947] 2 All E.R. 830, and 4 *International Law Quarterly*, p. 553.
[8] (1881), 17 Ch.D. 266.
[9] (1883), 24 Ch.D. 637.
[10] (1840), 7 Ch. & Fin. 895.

in lawful wedlock. Moreover, after a discussion of *Shaw* v. *Gould*, Romer, J., concluded that that case was distinguishable. Finally, Romer, J., stated that in a case of succession to personalty he proposed to follow *Re Goodman's Trusts*, and to hold that the claimant, who was legitimate by the law of his domicile of origin must be recognised as legitimate for the purposes of taking under the will. The question of legitimacy was quite separate from and not connected with the question of the validity of the marriage of the parents.

The decision accords with the views of Wolff,[11] Schmitthoff [12] and Robertson.[13] It does not agree with the views of Westlake [14] and Morris,[15] who consider that in every case the legitimacy of a child depends upon the validity of its parents' marriage. While Cheshire regards the reference to the law of domicile of origin as desirable and appropriate, both he and Welsh consider that *Shaw* v. *Gould* is clear authority for the proposition that questions of legitimacy arising under an English will are matters of construction. This view was flatly rejected by Romer, J., who held that such a question arising under an English will was not a matter of construction, but a question of status to be governed by the appropriate law, *i.e.*, the law of the domicile of origin.

Re Goodman's Trusts and *Re Andros*, on which Romer, J., relied, were both cases of legitimation per subsequens matrimonium, not of legitimacy. However, the learned judge stated that this difference was of no importance. Yet both Cheshire and Welsh show that the law has developed differently in these two cases. In a matter of succession under an English will, they say, a question of legitimacy has been treated as a question of construction. Where the question turns on legitimation per subsequens matrimonium, on the view which prevailed in *Re Goodman's Trusts*, the matter was treated as one of status, referable to the appropriate systems of law which were according to the doctrine then prevailing, the lex domicilii of the father of the child at birth and at the date of the subsequent marriage. Welsh has drawn attention to the remarkable use of the case of *Boyes* v. *Bedale* [16] in cases of legitimacy and legitimation per subsequens matrimonium. That was a case of succession under an English will. The child was legitimate by the law of his domicile of origin, but Wood, V.-C., held that he could not take under an English will, since in such an instrument, in the

[11] *Private International Law*, pp. 388–9.
[12] *English Conflict of Laws*, p. 274.
[13] *Characterisation in the Conflict of Laws*, p. 134.
[14] *Private International Law* (7th ed.), pp. 101, 231.
[15] *Cases on Private International Law*, pp. 89–90, 188–9.
[16] (1863), 1 H. & M. 798.

absence of contrary intention, children must be construed as children lawfully begotten. In *Shaw* v. *Gould*, a case of legitimacy, *Boyes* v. *Bedale* was relied on by Kindersley, V.-C., below,[17] to reach the decision which was affirmed by the House of Lords. In *Re Goodman's Trusts*, a case of legitimation, Jessel, M.R., below, and Lush, L.J., in the Court of Appeal, dissenting, followed the same line, but the majority in the Court of Appeal declined to follow *Boyes* v. *Bedale* which James, L.J., characterised as a 'violent presumption'.[18] The majority, as we have seen, elected to treat the matter as one of status. In this peculiar way the paths of legitimacy and legitimation per subsequens matrimonium parted, and it is submitted, with respect, that the brusque rejection of any distinction between them by Romer, J., does scant justice to an interesting, if unsatisfactory, piece of law.

Everything, however, turns finally on *Shaw* v. *Gould*, which Romer, J., held to be distinguishable. There, under an English will, English land was devised for the sons lawfully begotten of Elizabeth, and funds were bequeathed for the children of this lady. The question was whether three children of Elizabeth and Shaw might take. Elizabeth had been fraudulently induced to marry Buxton, a domiciled Englishman. Later she wished to marry Shaw, and it was arranged that Buxton should go to Scotland for forty days so that the Scottish courts might grant a divorce. The divorce was granted, and Elizabeth married Shaw, who was domiciled in Scotland. By Scottish law, this second marriage was valid and the children legitimate. In the view of English law, the marriage was invalid as the Scottish courts had no jurisdiction to dissolve the marriage with Buxton. It was strenuously argued that the validity of the marriage and the legitimacy of the children were separate issues, but this failed to convince the House of Lords. Lord Chelmsford put it that the Scottish view of the legitimacy of the children was irrelevant. What was before the court was a question of legitimacy arising under an English will. This had to be decided according to the rules of construction applicable to an English will. The invalidity in the eyes of English law of the Scottish divorce invalidated the second marriage. Therefore the children were illegitimate, since they were not born in lawful wedlock as required by an English will.

It is submitted that Romer, J.'s comments on this decision are not easy to follow. In the first place the learned judge challenged the relevance of the reference to the validity of the second marriage in *Shaw* v. *Gould*. 'The relevance of the Scottish proceedings and

[17] (1865), L.R. 1 Eq. 247, 266.
[18] (1881), 17 Ch.D. at p. 300.

of the decree which resulted therefrom appears to me to have been a matter rather of assumption by the House than of direct decision '.[19] But it is submitted that the validity of the second marriage was the cornerstone of the decision of the House of Lords in *Shaw* v. *Gould*. One has the more confidence in stating this, because it is supported by Cheshire and Welsh, and indeed by Wolff,[20] though he strongly attacks the decision. Romer, J., further observed of *Shaw* v. *Gould* that if the validity of the divorce were a legitimate subject of inquiry the decision that it was invalid necessarily led to the conclusion that the children's domicile of origin was English, as Elizabeth's domicile followed Buxton's. It has been argued by Beale [21] that *Shaw* v. *Gould* was correctly decided since, though the children may have been the legitimate issue of Shaw, they were the illegitimate issue of Elizabeth. Wolff,[22] however, emphatically rejects the idea that a child can be legitimate as regards its father and illegitimate as regards its mother, and that the lex domicilii of the father must be decisive. But this does not assist our inquiry, since the important fact is that the House of Lords regarded the determination of the validity of the marriage as a necessary step in determining the question of the legitimacy of the children. Again, the learned judge observed that, on the reasoning of the House in *Shaw* v. *Gould*, a claim founded on the international acceptance of a status conferred by the domicile of origin was not regarded as relevant. This, with respect, is answered simply by the statement that the speeches make it clear that what was relevant was the construction of an English will, and on this footing a necessary step in ascertaining whether children were legitimate was a decision upon the validity of the parents' marriage.

Finally Romer, J., suggested that in *Shaw* v. *Gould* English real estate was involved, and this may have been regarded as a relevant factor. This point appears to evoke some response in Cheshire, though it does not affect his main conclusion upon the decision in *Shaw* v. *Gould*. But English funds were also involved, and beyond the rule in *Birtwhistle* v. *Vardill* there is no magic in English real estate. Moreover, in *Re Paine*,[23] a case involving an English will of movables, Bennett, J., held that a child was illegitimate because of the invalidity of the marriage of its parents. Yet at the time of the birth of the issue the father was domiciled in

[19] [1947] 2 All E.R. at p. 836.
[20] *Op. cit.*, pp. 395, 397.
[21] *Conflict of Laws* (1935), Vol. 2, pp. 704–6.
[22] *Op. cit.*, p. 389.
[23] [1940] Ch. 46.

Germany, by which law the child was legitimate. The mother was domiciled in England throughout. Apparently this case was not cited to Romer, J.

It is submitted that *Re Bischoffsheim* is indistinguishable from *Shaw* v. *Gould* and *Re Paine*. In all three the issue was one of legitimacy arising in cases of succession under English wills. *Re Goodman's Trusts* and *Re Andros* are, as Romer, J., conceded, cases of legitimation, and what appears in them on the subject of legitimacy is dictum. Moreover, with the greatest respect to Romer, J., it is submitted that the courts have drawn a clear, if questionable distinction between the issues arising in cases of legitimacy and legitimation. It is further submitted that examination of *Shaw* v. *Gould* and *Re Paine* confirms the view confidently stated by Cheshire and Welsh. When the grounds on which Romer, J., distinguished the instant case from *Shaw* v. *Gould* are examined they seem at best to be extremely dubious. In sum, therefore, it is submitted that the authority of *Shaw* v. *Gould* required Romer, J., to do just what he stated he was not obliged to do—that is, to ascertain the domicile of the parents at the date of the marriage so as to determine whether it was or was not a valid marriage. It may be that it is desirable to treat questions of legitimacy arising under English wills as matters of status to be referred to the appropriate law governing status. But a decision of the House of Lords stands in the way.

THE GUATEMALA-BRITISH HONDURAS DISPUTE

1. *Historical Outline*

The colony of British Honduras grew out of the activities of buccaneers, turned logwood cutters, in the early seventeenth century. One Peter Wallace, reputed to be a lieutenant of Sir Walter Raleigh, whom the Spaniards called 'Balis', settled on the river which was to take the name of Belize after him. Throughout the eighteenth century the status of the logwood cutters was a centre of controversy between Spain and England, and the Baymen, as the settlers came to be called, were under repeated Spanish attack. By the Treaty of Paris, 1763, Spanish sovereignty in the area was declared in plain terms, but Great Britain secured the right for His Majesty's subjects not to be 'disturbed or molested under any pretext whatsoever in their occupation of cutting, loading and carrying away logwood' and to 'build and occupy without interruption the houses and magazines necessary for them, their families and their property'. There was, however, no definition of the boundaries of the area in which the logwood cutters might settle

and operate. The Treaty of Versailles, 1783, and the Convention of London, 1786, though reaffirming Spanish sovereignty, extended and enlarged the concessions granted to British settlers. In 1796 war between England and Spain in Europe required that the settlement of Belize, as it was now called, be put in a state of defence, and in 1798 the Spanish forces in Yucatan launched a major attack against it; in a naval action off St. George's Key the Spanish fleet was defeated and driven off in confusion. This was Spain's last attempt to dispossess the British settlers by force; they were now firmly established under British administration in the person of a Superintendent, subordinate to the Governor of Jamaica, and were already extending the boundaries of the settlement beyond the River Sibun in the south.

Between 1821 and 1825 Mexico and Guatemala proclaimed their independence of Spain and Spain's effective sovereignty was swept away throughout Central America. Thus Spain had ceased to exercise sovereign rights in the region for some time before Guatemala and Mexico came into existence as independent States.

The question of recognition of the new Central American republics gave rise to discussions between Guatemala and Mexico on the one hand and Great Britain on the other as to the status and extent of British Honduras, as the settlement with its capital Belize, was now coming to be called: these continued for the next quarter of a century and culminated in the Anglo-Guatemalan Convention of 1859.

In April, 1859, this 'Convention between Her Majesty and the Republic of Guatemala relative to the Boundary of British Honduras' was signed in Guatemala City and ratified by both parties. It consisted of eight Articles.

Article 1 described the boundary between 'the Republic and the British Settlement and Possessions in the Bay of Honduras, as they existed previous to and on 1 January 1850'; the territory north and east of this line was declared to belong to Great Britain, and that to the south and west to Guatemala.

Articles 2–5 provided for the appointment of boundary commissioners for the purpose of ascertaining the latitude and longitude of certain named points on the boundary line, and of setting down boundary marks where necessary.

Article 6 provided that the water channels, where these formed the boundary, should be open to the ships of both parties.

Article 7, which forms the core of the dispute between Guatemala and the United Kingdom, reads as follows: 'With the object of practically carrying out the views set forth in the preamble of the present Convention, for improving and perpetuating the friendly

relations which at present so happily exist between the two high contracting parties, they mutually agree conjointly to use their best efforts, by taking adequate means for establishing the easiest communication (either by means of a cart road, or employing the rivers, or both united, according to the opinion of the surveying engineers), between the fittest place on the Atlantic Coast, near the Settlement of Belize, and the capital of Guatemala; whereby the commerce of England on the one hand, and the material prosperity of the Republic on the other, cannot fail to be sensibly increased, at the same time that the limits of the two countries being now clearly defined, all further encroachments by either party on the territory of the other will be effectually checked and prevented for the future'.

Her Majesty's Government sent Captain Wray of the Royal Engineers both to act as boundary commissioner and to prospect the road to the coast contemplated under Article 7. This road survey was completed in 1860 but the boundary survey was only partly executed and was abandoned in 1861 owing to the uncertainty as to where Guatemalan territory ended and Mexican territory began. The cost of construction of the road was estimated by Wray and his colleague to be far higher than was expected.

These considerations led to the conclusion of a supplementary Convention in 1863, which Guatemala, however, failed to ratify. The principal stipulations were that Great Britain would contribute £50,000 in five instalments towards the cost of construction of the road, contemplated in Article 7 of the main treaty, which was to be undertaken and completed by Guatemala within four years.

Since the lapse of the 1863 Convention, the dispute has crystallised around the fulfilment of Article 7 of the 1859 Convention, and despite offers by Great Britain in 1895 to pay £50,000 towards the cost of a railway from Belize to the Guatemalan frontier, in 1934 to build a road over the same ground, and in 1936 to pay £50,000 in final settlement, Guatemala has neither taken steps on her own part towards the performance of her obligation under Article 7, nor accepted Great Britain's offers.

In September, 1945, Guatemala amended her Constitution, declaring British Honduras to be Guatemalan territory, and His Majesty's Government in the United Kingdom, being of the opinion that the dispute was of an essentially legal character, accepted, on February 14, 1946, the jurisdiction of the International Court of Justice under Article 36 (2) of its Statute, over claims brought by Guatemala or any other State in respect of British Honduras. Guatemala countered with a request that His Majesty's Government agree to empower the Court to decide the dispute ex aequo et bono

under Article 38 (2) of its Statute. This request was refused on the ground that this would be an invitation to the Court to override the legal rights of the parties; that Guatemala's claim is that British Honduras is legally Guatemalan territory; that such a claim can be decided by the Court under Article 36 of its Statute and that His Majesty's Government's acceptance of the Court's jurisdiction over the dispute would enable it to pronounce upon every one of the grounds upon which Guatemala bases its claim.

Since 1946 Guatemala has intensified her propaganda and threats to the security of British Honduras.

2. *Legal Contentions*

The Guatemalan case may be summarised in the following way:

(i) That the 1859 Convention was, in effect, a treaty of cession of territory, and that Great Britain's undertaking in Article 7 was the consideration for the recognition by Guatemala of British sovereignty over British Honduras, and for the cession by Guatemala of those parts of the territory which were not part of the Settlement of Belize at the time of the Anglo-Spanish Treaties of 1783 and 1786;

(ii) that Great Britain has not performed its obligations under Article 7, and has, in fact, repudiated them; that the consideration underlying the agreement has therefore failed, and that the 1859 Convention is in consequence a nullity;

(iii) that Spanish sovereignty de jure over what is now British Honduras was never formally abandoned before 1821, and that Guatemala as a successor State is therefore entitled to assume it, in default of the territorial settlement reached in the 1859 Convention.

It may be said in answer to these contentions:

(i) that Article 1 of the 1859 Convention is a clear recognition of British sovereignty over British Honduras; that Article 7 contains a separate obligation, undertaken jointly for a purpose expressly set out in the Article; that non-fulfilment of the obligation by either party can in no way compromise Article 1 or the rest of the Convention, since if the undertaking to share in the construction of the road is consideration for anything in the agreement, it is consideration for the definition of the boundary as a token of Guatemala's abandonment of a claim of right (as opposed to a right), which in any case Great Britain did not admit; and that the 1859 Convention is therefore still in force and the United Kingdom is still prepared to perform its part under it;

(ii) that even if the 1859 Convention had ceased to be effective Guatemala cannot establish any claim to sovereignty over British Honduras, neither de facto since she has at no time occupied it or any part of it, or de jure since, if it be admitted that Guatemala was the successor to Spain in this area, there is still no evidence that the Captaincy-General of Guatemala ever had jurisdiction in the disputed territory.

3. Despite its complex history the legal issues in this case are clear, and so, it is submitted, is the legal position: it is to be hoped that the International Court may yet have the opportunity of declaring it, and so bring the unhappy dispute to an end.

TERMINATION OF THE BRITISH MANDATE FOR PALESTINE

Seen in its juridical aspect the problem of Palestine raises many questions of great interest to international lawyers. At their creation after the 1914–18 war, mandates were of course an original genus without precedent in international law or history. Mandated territories were potentially sovereign states temporarily under tutelage until such time as full independence could, in international opinion, warrantably be accorded them. Each was placed under the more immediate control of a mandatory Power, which in turn was responsible for the exercise of the mandate to the Permanent Mandates Commission of the League of Nations. As to the question where sovereignty over the territory resided during the continuance of the mandate, various views were advanced by different authorities, some at one end of the scale finding sovereignty to reside in the inhabitants of the mandated territory (though temporarily in suspense), others finding it to be in the League of Nations or in the mandatory Power either alone or acting with the consent of the League. Yet other views were advanced, but perhaps the most logical suggestion was that sovereignty resided in the League of Nations which had delegated its exercise to the mandatory Power.

At their creation it was envisaged that the mandates would find their natural and only conclusion in the attainment of independence by the mandated territory. Thus, in common with others, the Palestine mandate, though contemplating termination in the normal way, made no express provision for termination in any other circumstances. In the event, though the United Nations Special Commission on Palestine in its report to the General Assembly of September, 1947,[1] recommended that 'The Mandate for Palestine

[1] Chapter 5, pp. 42–43.

shall be terminated at the earliest practicable date' and that 'Independence shall be granted in Palestine at the earliest practicable date', it made two further recommendations envisaging a transitional period between the termination of the mandate and the grant of independence, during which 'the authority entrusted with the task of administering Palestine and preparing it for independence shall be responsible to the United Nations'. With the League of Nations dissolved, and the United Nations not its successor in law, with the Permanent Mandates Commission dissolved and the Trusteeship Council not its successor in law, lawyers have ample opportunity to indulge in the pastime of 'hunting the sovereignty' from the treble aspect of where it is now, where it will be during the transitional period (*i.e.*, following May 15, when Great Britain relinquishes the mandate) and where it will be ultimately. The question is further complicated by the fact that alongside the mandatory Power, the mandate contemplated the existence of the 'Administration of Palestine'. The two were in fact mainly indistinguishable but in law were divergent, the Administration of Palestine being of course the embryonic government which would take over control on the relinquishment of the mandate by the mandatory Power. Such investigation, though from the standpoint of the Palestine problem as it now stands purely an academic one, might produce conclusions worthy to be borne in mind in the completion of future international agreements under the Trusteeship Council. The Palestine problem itself is a human tragedy demanding nothing but the most realistic and practical approach, as the debates in the House of Commons over the bill to terminate the British mandate have so strongly emphasised. But no country with traditions of government such as ours can fail to have regard to the legal details of such a transfer of authority as the termination of the Palestine mandate involves. It was in reply to questions touching on the legal considerations outlined above, raised in the debate on the first reading, from both sides of the House of Commons, that the Attorney-General made the position of H.M. Government clear. There was no general rule of international law, he suggested, to prevent termination of the mandate by the United Kingdom, and insofar as on a narrower view the original mandate might be regarded as a kind of contractual undertaking, the impossibility of performing the object of that undertaking, as originally contemplated, frustrated the agreement (ad impossibilia nemo tenetur).

In this the Attorney-General was of course directly in line with the report of the United Nations Special Commission on Palestine

which in its comment, appended to the first recommendation that the mandate should be terminated, stated inter alia:

'In the nature of the case, the mandate implied only a temporary tutelage for Palestine. The terms of the mandate include provisions which have proved contradictory in their practical application.

'It may be seriously questioned whether, in any event, the mandate would now be possible of execution. The essential feature of the mandate system was that it gave an international status to the mandated territories. This involved a positive element of international responsibility for the mandated territories and an international accountability to the Council of the League of Nations on the part of each mandatory Power for the well-being and development of the peoples of those territories. The Permanent Mandates Commission was created for the specific purpose of assisting the Council of the League in this function. But the League of Nations and the Mandates Commission have been dissolved and there is now no means of discharging fully the international obligation with regard to a mandated territory other than by placing the territory under the International Trusteeship System of the United Nations.

'The International Trusteeship System, however, has not automatically taken over the functions of the mandates system with regard to mandated territories. Territories can be placed under trusteeship only by means of individual trusteeship agreements approved by a two-thirds majority of the General Assembly.

'The most the mandatory could now do, therefore, in the event of the continuation of the mandate, would be to carry out its administration, in the spirit of the mandate, without being able to discharge its international obligations in accordance with the intent of the mandates system. At the time of the termination of the Permanent Mandates Commission in April, 1946, the mandatory Power did, in fact, declare its intention to carry on the administration of Palestine pending a new arrangement, in accordance with the general principles of the mandate. The mandatory Power has itself now referred the matter to the United Nations.'

The termination of the mandate also produces interesting results from the standpoint of private international law. It has frequently been overlooked that 'citizens' of British mandated territories are in respect of non-British jurisdiction, and at international law generally, 'British nationals' entitled to the same rights and protection as British subjects. *The King* v. *Ketter*, 108 L. J. K. B. 345; [1940] 1 K. B. 787, clearly established that a Palestinian citizen is, from the point of view of English domestic jurisdiction, not a British subject but an alien, but it did not of course touch on the converse aspect of the international position of a British

protected person. This was brought out clearly in the case of *National Bank of Egypt* v. *Austro-Hungarian Bank* (*Annual Digest of International Law Cases*, 1923–4, Case No. 10) which came before the Anglo-Austrian Mixed Arbitral Tribunal, where it was stated that 'according to principles recognised in modern international law, a member of a protected nation, while he is not by means of the protection of the dominant state a citizen of the latter for the purposes of our municipal laws is, nevertheless, speaking generally, in regard to foreign Powers and their citizens, in a position analogous to that of a citizen of the Protecting State. Such rights as he may enjoy, beyond those which he has in relation to the other members of the community to which he belongs, are secured to him by virtue of the ex-territorial status of the Protecting Power'.[2] On the termination of the mandate, Palestinian citizens will presumably be divested of the quality of British nationals in international law. This raises the problem of the securing of their rights at international law during the transition period before Palestine becomes independent. During the continuance of the mandate the conduct of the external relations of Palestine and the protection of Palestinian citizens abroad is the function of the mandatory Power. On the termination of the mandate, Palestinian citizens cease to be British nationals in the sense of British protected persons, though they remain of course Palestinian citizens. Precisely what that means in practice depends upon the authority that succeeds the mandatory Power, but in the event of this being an international authority, as envisaged in the recommendation of the Special Commission, then the protection of the international position of Palestinian citizens would presumably become a delegated responsibility of the United Nations organisation itself. The question what will be the precise status of Palestinian citizens in international law pending the independence of Palestine is debatable.

THE UNITED NATIONS COMMISSION ON THE STATUS OF WOMEN

The Economic and Social Council of the United Nations has set up a commission to examine the practical effect of existing legislation concerning the status of women throughout the world, with a view to considering the best means of eliminating discrimination on

[2] See J. Mervyn Jones: *British Nationality, Law and Practice*, p. 292, note, p. 296, note.

grounds of sex. In order to assist the commission in their task, the secretariat has sent to Member countries a questionnaire which is designed to show—

(1) the civic status of women, *i.e.*, their right to vote and to hold public office, and

(2) the discrepancy, if any, between their general status and the ideal status based on complete sex equality which is indicated in the Charter.

It is significant that although this questionnaire deals only with the status of women in public law—their right to vote, to enter the civil service or the professions, to hold public office and to be regarded as equals in questions of nationality and education—only thirty-four of the fifty-seven Member States have replied to this very limited questionnaire.

Sufficient information has been collected from other sources, however, to enable the commission's report to supply a reasonably clear picture of the conditions existing in seventy-four States, and it is hoped that in due course further questionnaires will widen the field of inquiry in these countries to cover the economic status of women and also their status in the contemplation of criminal law, the law of contract and family law. This information will enable the commission to form conclusions and make recommendations on action by the United Nations to implement the Charter's provisions regarding equality of sexes.

In the meantime the Report shows that in these seventy-four States—

forty-seven have legislation granting women equality with men in matters of franchise and eligibility for public office;

twenty-three have no legal provisions securing equality in these matters;

four have accorded women limited rights.

In most of the forty-seven States the legislation granting equality to women was passed after the last war, but it is interesting to note that New Zealand bestowed the vote upon women as early as 1893 and Finland recognised their complete equality in 1907. At the other end of the scale we find that French women have only recently been granted political rights in recognition of their work in the second World War, and it has taken all the efforts of the United Nations Commission on the Status of Women to arouse Argentina, Venezuela and Costa Rica to a recognition of women's rights.

With regard to franchise, it has been shown that in certain countries women are not only handicapped by sex discrimination, but are also classified under those sections of the community possessing inferior political rights. Thus, in Western Samoa and Queensland

women of non-European origin do not possess the right to vote which is enjoyed by their menfolk and by women of European origin. Similarly, in Guatemala literate men *must* vote, but illiterate men *may* vote if they wish to do so. Literate Guatemalan women, on the other hand, *may* vote, but their illiterate sisters *may not* vote, and as the vast majority of the Guatemalan population is illiterate, this has the practical effect of depriving most Guatemalan women of the franchise.

In Belgium women have the right to vote in municipal elections but in national elections only those women may vote who were political deportees in the first World War or who are mothers or widows of servicemen or of political victims killed in that war. With the exception of judicial posts, however, Belgian women may hold almost all the political offices on equal terms with men, and the Report points out that in this respect Belgium constitutes the exception to the general rule that the franchise and the right to hold political office go hand in hand. Incidentally, it is interesting to notice that the franchise could be given to Belgian women without entailing any alteration of the Belgian constitution.

As might be expected, the discrimination against women is most marked in Mohammedan countries and, though there may be no provision in the law indicating any limitation of their rights, in practice they usually have little or no political freedom and are almost entirely excluded from public office.

PRIVILEGES OF ACCREDITED CORRESPONDENTS TO THE UNITED NATIONS

On January 12, 1948, the United Nations and United States authorities met at Lake Success to discuss, inter alia, the application of the Headquarters Agreement on the status and privileges of journalists duly accredited to the United Nations. The discussions were the direct result of the arrest and detention on Ellis Island by the United States authorities of two correspondents after November 26, 1947, the date on which the Headquarters Agreement came into force.

The two men concerned were Nicolas Kyriazides, who represented the newspaper *Demokratis* of Cyprus, and Syed S. Hasan, correspondent for the Communist *People's Age* of Bombay. On December 19, Mr. Kyriazides telegraphed to Secretary-General Trygve Lie to the effect that, despite the fact that he was an accredited correspondent to the United Nations, he was being detained on Ellis Island for deportation on the ground that he

could no longer be regarded as a bona fide correspondent to the United Nations since the Communist publication which he had represented at the date of his entry into the United States had since been suppressed.

On receipt of this telegram, an immediate search was made through the United Nations files and it was ascertained that while the Communist paper *Rizospastis* of Athens had indeed been suppressed on October 18, Mr. Kyriazides had been re-accredited to the Cypriot paper on October 23. Moreover, article 4, section 11, of the Headquarters Agreement states that ' United States authorities shall not impose any impediment to transmit to or from the headquarters district ' of any representatives of the press, radio, films, etc., ' who have been accredited by the United Nations . . . in its discretion after consultation with the United States '. Section 13 further provides that this right shall not be violated by United States laws regarding aliens, and no proceedings shall be instituted against any person abusing the privilege without the prior approval of the United States Secretary of State in consultation with the Secretary-General of the United Nations.

Fortified by these provisions Mr. Lie, on December 22, sent a telegram to Mr. Warren R. Austin, chief of the United States Mission to the United Nations, requesting immediate action in accordance with the spirit of the Headquarters Agreement.

Almost immediately after the dispatch of this telegram, a further telegram arrived from Ellis Island, this time from Mr. Hasan, to the effect that he too had been arrested by the United States immigration authorities. Consequently, as soon as it had been confirmed that Mr. Hasan was a duly accredited correspondent, Mr. Lie dispatched a second telegram to Mr. Austin requiring that urgent consideration should also be given to Mr. Hasan's predicament.

In due course the two journalists were released and, after hearing their accounts of the incidents, the Standing Committee of United Nations Correspondents passed a resolution on December 30 endorsing the Secretary-General's interpretation of the Headquarters Agreement and repudiating categorically ' any discrimination against correspondents on grounds of race, creed, colour, nationality or political affiliation '.

In his letter addressed to the Secretary-General on December 31, Mr. Austin referred to the release of the two correspondents and stated that no further action would be taken against them without consulting Mr. Lie. Nevertheless, he doubted whether the Headquarters Agreement could be held to apply to these men since they had both been accredited before the date on which the agreement

came into force and consequently the United States authorities had not been consulted before the appointments, as provided in the agreement. He conceded that in practice it may have been impossible for the United Nations to consult the United States authorities on all prior accreditations during the very short period which had elapsed since the agreement came into force, but suggested that the entire list of accreditations should now be reviewed by the United Nations and United States authorities and that in any case, where a question of interpretation of the agreement arose, the matter should be settled by informal discussions.

The Secretary-General replied to Mr. Austin on January 7 and expressed his appreciation at the release of the two correspondents. He agreed that the United States authorities should be notified at once of any change of status, and added that a complete list of the correspondents now accredited to the United Nations would shortly be transmitted to the United States authorities and that any comments made by them would be considered when applications for the renewal of accreditations were made.

DOMESTIC JURISDICTION IN THE COVENANT AND THE CHARTER [3]

Unlike the parallel clause in the Charter, article 15, paragraph 8, of the Covenant proved comparatively simple to interpret. The defence that a dispute arose out of a matter solely within its domestic jurisdiction had to be raised by one of the parties to the dispute. It was for the Council (or the Assembly) to decide on the validity of the defence, and it had to decide by international law. The effect of the last provision was that the preliminary question of jurisdiction was left to the decision of the Permanent Court of International Justice. The court in its advisory opinion on the dispute in 1923 between Britain and France over certain nationality decrees in Tunis and Morocco laid down the principle that whenever the solution of a matter in dispute depends on the preliminary construction of rights and obligations of an international character between the parties, the dispute cannot be regarded as solely within the domestic jurisdiction of one of them.

Although in the Dumbarton Oaks Proposals the exclusion of matters of domestic jurisdiction was provided for in the chapter dealing with the settlement of disputes, at San Francisco the Sponsoring Powers introduced an entirely new clause, which was

[3] Summary of the paper read on November 5, 1947, to the Grotius Society by L. B. Schapiro, LL.B., Barrister-at-Law.

removed from this chapter and ultimately became, in its present form of article 2, paragraph 7, one of the principles of the Charter. As was emphasised in committee, what in the Covenant had been a technical defence became a fundamental principle asserting the right of members to freedom of 'intervention' in matters 'essentially' (no longer, as in the Covenant, 'solely') within their domestic jurisdiction. Cases where the Security Council decides to take enforcement measures are, however, excluded from the protection of the paragraph.

It seems clear that if once the Security Council has determined the existence of an actual threat to the peace or act of aggression under article 39, then article 2 (7) cannot be of any effect in precluding enforcement measures decided on by the Security Council. Indeed, apart from the provisions of the Charter, the right to intervene where an immediate and actual threat exists may be said to be well recognised in international law. It has, however, been argued before the United Nations organs, that the right of the Organisation to intervene in a matter otherwise domestic arises even where the decision of the Security Council is based on the existence of a dispute or situation which is only 'likely to endanger the maintenance of international peace and security' within the terms of article 34. This problem of interpretation has not yet been resolved in United Nations experience to date. If the latter interpretation be correct, and if a merely potential threat to international peace justifies intervention, a formidable new power will have been created in view of the wide wording of article 34 (which is even wider in the Russian and Spanish texts)—granted, of course, the unlikely contingency of all the 'veto powers' being agreed on a proposed intervention.

In the General Assembly the problems of interpretation of article 2 (7) have been of a different nature. Primarily the General Assembly has no powers of direct action under the Charter, but mainly powers of discussion, co-ordination and recommendation. But although discussion and recommendation are not, in the ordinary meaning of the term in international law, intervention at all, members have shown themselves jealous of any attempts by the General Assembly to overstep the limit where recommendation borders on interference. This was well illustrated in the discussion of a proposed Philippine resolution on non-self-governing territories. The principle which seems to emerge from the discussions of the various amendments considered, is that a recommendation relating to a matter of domestic jurisdiction may suggest in general terms how an obligation under the Charter can best be carried out by members, but may not recommend a procedure which, if followed,

would limit the ultimate freedom of action of the responsible States concerned.

In this instance the General Assembly did not decide that the question before it was not one of essentially domestic jurisdiction. That it can so decide, and decide without reference to the International Court of Justice, is illustrated by the discussion in the General Assembly of the question of South African legislation relating to Indians. This power of the United Nations is the direct result of the omission in article 2 (7) of the Charter of the words which in article 15 (8) of the Covenant qualify a matter of domestic jurisdiction—the words ' by international law '. At San Francisco one delegate justified this omission on the grounds that international law is too vague. The long debates in the committees of the General Assembly did not reveal any argument of greater note against reference to the International Court of the question of jurisdiction, and the action of the General Assembly in deciding itself the purely legal issue of jurisdiction in this case is to be deplored. In its essence, the dispute between India and South Africa was very comparable to the dispute between France and Britain in 1923 : India alleged violation of international agreements between her and South Africa ; South Africa denied the international nature of these agreements. It would therefore have been possible for the International Court of Justice to decide the preliminary legal question of the General Assembly's jurisdiction without having to investigate the questions of fact in issue. Where genuine legal questions are involved, only a judicial body can decide not only impartially, but indeed with any finality of authority. As it is, a decision of the General Assembly opposed by fifteen negative votes and seven abstentions seems in the event less likely to achieve a settlement between the parties than would a recommendation following on a judicial decision defining the precise limits of the General Assembly's jurisdiction. It should be noted that in this case, in contrast to the discussions on the Philippine Resolution, the General Assembly, having voted on the question of law that the matter was not one of essentially domestic jurisdiction, considered itself empowered to make concrete recommendations to the parties on the matters in dispute, which went much further than the general recommedations voted in the former instance, and which, in the legal sense of the word, amounted to intervention.

In the case of the discussions on Spain in the General Assembly, the resolution adopted also went very much further than the limits of general recommendation which may be said to lie outside the province where intervention begins. Moreover the resolution was based not on the existence of any imminent threat to international

peace, but at most on the ' potential menace to international peace ' which a sub-committee of the Security Council had found the Spanish régime presented. But it is doubtful if this case can be regarded as a precedent for interventions by the Organisation in other cases of potential threats to peace : Spain is not a member of the United Nations and the action of the General Assembly in this instance should more correctly be regarded as an instance of action under the obligation imposed on the United Nations by article 2 (6) to ensure that non-Member States act in accordance with the principles of the Charter.

The right of the United Nations Organisation to intervene in the internal affairs of a Member State must in every case derive either from the Charter or from the general principles of international law. International law is far from clear on the question of intervention : in considering the legal limits of domestic jurisdiction, it may be that some assistance can be derived from the Continental doctrine of abuse of rights. But much work of precise definition in this sphere lies ahead. It certainly seems fallacious to argue, as some have argued in the United Nations, that no question which related to the carrying out of any obligation imposed on a member by the Charter can ever be a question of essentially domestic jurisdiction, and that therefore the Organisation can freely intervene on such questions. This view is not only contrary to the views expressed in committee at San Francisco; it also contains the unjustifiable assumption that the Organisation is empowered to intervene in every case where the Charter does not expressly prohibit intervention. Some of the confusion now apparently reigning on the subject of domestic jurisdiction could probably be dispelled by a clear recognition that the discussion of an essentially domestic matter is not of itself intervention, nor is a recommendation in general terms; it only becomes intervention when its terms are such as to limit a Member's freedom of action.

REVIEW OF CASES

INTERNATIONAL COURT OF JUSTICE

The Corfu Channel Case (Preliminary Objection)

Proceedings instituted by application alleging a case of compulsory jurisdiction specially provided for in Charter of United Nations (Article 36, paragraph 1, of Statute; Articles 25, 32, 36, paragraph 3 of Charter).—Preliminary objection to admissibility founded on an alleged procedural irregularity, as well as on alleged want of jurisdiction (Articles 40, paragraph 1, and 36, paragraph 1, of Statute; Article 32, paragraph 2, of Rules).—Jurisdiction founded on voluntary acceptance by respondent.—Waiver of objection to admissibility.—Form of acceptance of jurisdiction.—Acceptance by parties by means of separate and successive steps.—Recommendation of Security Council to submit a dispute to the Court (Article 36, paragraph 3, of Charter of United Nations).—Reservations upon acceptance of jurisdiction.

The Judgment (delivered on March 25, 1948).

Present: *President:* Guerrero; *Vice-President:* Basdevant; *Judges:* Alvarez, Fabela, Hackworth, Winiarski, Zoričić, De Visscher, Sir Arnold McNair, Klaestad, Badawi Pasha, Krylov, Read, Hsu Mo, Azevedo; M. Daxner, *Judge* ad hoc.

In the Corfu Channel case between the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the People's Republic of Albania.

The court, composed as above, delivers the following judgment:

By an Application, transmitted to and filed in the Registry of the Court on May 22, 1947, under Article 40, paragraph 1, of the Statute and Article 32, paragraph 2, of the Rules of Court, the Government of the United Kingdom of Great Britain and Northern Ireland instituted proceedings before the Court against the Government of the People's Republic of Albania. These proceedings concerned the incident which occurred in the Corfu Channel on October 22, 1946, when two British destroyers struck mines, the explosion of which caused damage to these vessels and heavy loss of life.

It is stated in the Application that the subject of the dispute and the succinct statement of the facts and grounds on which the claim of the United Kingdom is based are to be found in a note

dated December 9, 1946, transmitted by the Government of the United Kingdom to the Albanian Government, a copy of which is attached to the Application. It is alleged in the Application that the Court has jurisdiction 'under Article 36 (1) of its Statute as being a matter, which is one specially provided for in the Charter of the United Nations, on the grounds: (a) that the Security Council of the United Nations, at the conclusion of proceedings in which it dealt with the dispute under Article 36 of the Charter, by a Resolution, decided to recommend both the Government of the United Kingdom and the Albanian Government to refer the present dispute to the International Court of Justice; (b) that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter to participate in the discussion of the dispute and accepted the condition laid down by the Security Council, when conveying the invitation, that Albania accepts in the present case all the obligations which a Member of the United Nations would have to assume in a similar case; (c) that Article 25 of the Charter provides that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'.

Finally, it is stated in the Application that the purpose of the claim of the Government of the United Kingdom is to secure a decision of the Court that the Albanian Government is internationally responsible for the loss and injury resulting from the fact that two destroyers of the Royal Navy struck mines in Albanian territorial waters in the Corfu Channel, and to have the reparation or compensation due therefor from the Albanian Government determined by the Court.

By a telegram of January 24, 1947, the Albanian Government accepted the decision of the Security Council inviting it, in accordance with Article 32 of the Charter, to participate, without a vote, in the proceedings with regard to the dispute, on condition that Albania should accept, in the present case, all the obligations which a Member of the United Nations would have to assume in a similar case.

The Resolution of the Security Council of April 9, 1947, to which the Application refers, is as follows:

> 'The Security Council having considered statements of representatives of the United Kingdom and Albania concerning a dispute between the United Kingdom and Albania arising out of an incident on October 22, 1946, in the Strait of Corfu in which two British ships were damaged by mines with resulting loss of life and injury to their crews recommends that the United Kingdom and Albanian Governments should

immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court.'

Notice of the Application of the Government of the United Kingdom was given on May 22, 1947, by the Registrar of the Court, to the Albanian Government by telegram and by letter. On the same day, the Application was transmitted by the Registrar to the Secretary-General of the United Nations for communication in accordance with Article 40, paragraph 3, of the Statute.

On June 23, 1947, the Registrar received from the Albanian Government, following upon a reminder addressed to the latter, a telegram acknowledging receipt of the letter and telegram of May 22, and announcing the dispatch of a reply to these communications.

On July 23, 1947, the Deputy-Registrar received from the hands of M. Kahreman Ylli, Albanian Minister in Paris, a letter from the Deputy-Minister of Foreign Affairs of Albania, dated at Tirana, July 2, 1947, which confirmed the receipt of the Application, and, after referring to the contents of that document, requested the Registrar

'to be good enough to bring the following statement to the knowledge of the Court:

The Government of the People's Republic of Albania finds itself obliged to observe:

1. That the Government of the United Kingdom, in instituting proceedings before the Court, has not complied with the recommendation adopted by the Security Council on April 9, 1947, whereby that body recommended "that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court".

The Albanian Government considers that, according both to the Court's Statute and to general international law, in the absence of an acceptance by Albania of Article 36 of the Court's Statute or of any other instrument of international law whereby the Albanian Government might have accepted the compulsory jurisdiction of the Court, the Government of the United Kingdom was not entitled to refer this dispute to the Court by unilateral application.

2. It would appear that the Government of the United Kingdom endeavours to justify this proceeding by invoking Article 25 of the Charter of the United Nations.

There can, however, be no doubt that Article 25 of the Charter relates solely to decisions of the Security Council taken on the basis of the provisions of Chapter VII of the Charter and does not apply

to recommendations made by the Council with reference to the pacific settlement of disputes, since such recommendations are not binding and consequently cannot afford an indirect basis for the compulsory jurisdiction of the Court, a jurisdiction which can only ensue from explicit declarations made by States Parties to the Statute of the Court, in accordance with Article 36, 3, of the Statute.

3. The Albanian Government considers that, according to the terms of the Security Council's recommendation of April 9, 1947, the Government of the United Kingdom, before bringing the case before the International Court of Justice, should have reached an understanding with the Albanian Government regarding the conditions under which the two Parties, proceeding in conformity with the Council's recommendation, should submit their dispute to the Court.

The Albanian Government is therefore justified in its conclusion that the Government of the United Kingdom has not proceeded in conformity with the Council's recommendation, with the Statute of the Court or with the recognised principles of international law.

In these circumstances, the Albanian Government would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court by unilateral application, without first concluding a special agreement with the Albanian Government.

4. The Albanian Government, for its part, fully accepts the recommendation of the Security Council.

Profoundly convinced of the justice of its case, resolved to neglect no opportunity of giving evidence of its devotion to the principles of friendly collaboration between nations and of the pacific settlement of disputes, it is prepared, notwithstanding this irregularity in the action taken by the Government of the United Kingdom, to appear before the Court.

Nevertheless, the Albanian Government makes the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court in application of the Council's recommendations and more especially respecting the interpretation which that Government has sought to place on Article 25 of the Charter with reference to the binding character of the Security Council's recommendations. The Albanian Government wishes to emphasise that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future.

Accordingly, the Government of the People's Republic of Albania has the honour to inform you that it appoints as its Agent, in

accordance with Article 35, paragraph 3, of the Rules of Court, M. Kahreman Ylli, Minister Plenipotentiary of Albania in Paris, whose address for service at the seat of the Court is the Legation of the Federal People's Republic of Yugoslavia at The Hague.'

A copy of this letter, which had been handed to the Registry by the Agent for the Albanian Government, was transmitted, on July 24, to the Agent for the Government of the United Kingdom.

On July 31, 1947, the President of the Court, as the Court was not sitting, made an Order, in which, after ascertaining the views of the Parties with regard to questions of procedure, it was stated :

> ' Whereas on July 23, 1947, a note signed by the Deputy-Minister for Foreign Affairs was filed with the Registry on behalf of the Government of the People's Republic of Albania, in response to the Application of the Government of the United Kingdom;
>
> Whereas, in this note, the Albanian Government declares inter alia that the Government of the United Kingdom, in bringing the case before the Court by unilateral application, has not proceeded in conformity with the recommendation of the Security Council of April 9, 1947, or with the Statute of the Court or the recognised principles of international law, and that, accordingly, the Albanian Government would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court without first concluding a special agreement with the Albanian Government, but whereas the Albanian Government, fully accepting for its part the recommendation of the Security Council, is prepared, notwithstanding this irregularity and in evidence of its devotion to the principles of friendly collaboration between nations and of the pacific settlement of disputes, to appear before the Court;
>
> Whereas the note above mentioned gives notice of the appointment as Agent for the Albanian Government of M. Kahreman Ylli, Minister Plenipotentiary of Albania in Paris, and of his address for service at The Hague;
>
> Whereas, having regard to the Resolution of the Security Council of April 9, 1947, the said note of the Albanian Government may be regarded as constituting the document mentioned in Article 36 of the Rules of Court; '

In the Order, the time-limits were fixed as follows: October 1, 1947, for the presentation of the Memorial of the United Kingdom, and December 10, 1947, for the presentation of the Counter-Memorial of Albania.

The Albanian Preliminary Objection was transmitted, on December 9, to the Agent for the United Kingdom and was communicated on December 11 to the Members of the United Nations, pursuant to the provisions of Article 63 of the Statute.

By an Order, made on December 10, 1947, the President of the Court, as the Court was not sitting, fixed January 20, 1948, as the time-limit for the presentation by the Government of the United Kingdom of a written statement of its observations and submissions in regard to the Preliminary Objection.

As the Court did not have upon the Bench a judge of Albanian nationality, the Albanian Government availed itself of the right provided by Article 31, paragraph 2, of the Statute, and designated Dr. Igor Daxner, President of a Chamber of the Supreme Court of Czechoslovakia, as judge *ad hoc*.

In the course of public sittings, held on February 26, 27 and 28, and on March 1, 2 and 5, 1948, the Court heard oral arguments on behalf of the respective parties: M. Kahreman Ylli, Agent, and Professor Vochoč, Counsel, for Albania; and Mr. W. E. Beckett, Agent, and Sir Hartley Shawcross, Counsel, for the United Kingdom. On being questioned by the President before the close of the hearing, the Agent for the Albanian Government declared that the submissions presented in the Albanian Preliminary Objection of December 9, 1947, were final submissions; a similar declaration was made on behalf of the Agent for the Government of the United Kingdom with regard to the submissions in the Observations of the United Kingdom of January 19, 1948.

Documents in support were filed as annexes to the Application and Memorial of the United Kingdom Government, to the Preliminary Objection of the Albanian Government and to the Observations of the United Kingdom Government in regard to this Preliminary Objection, as well as in view of the oral proceedings.

The above being the state of the proceedings, the Court must now adjudicate upon the Preliminary Objection raised on behalf of the Government of the People's Republic of Albania.

* * *

In the written submissions, which it confirmed orally at the hearing on March 5, 1948, the Albanian Government requests the Court

> ' to place on record that the Albanian Government, in accepting the Security Council's recommendation, is only obliged to submit the above-mentioned dispute to the Court in accordance with the provisions of the Statute of the Court ',

and

> 'to give judgment that the Application of May 13 last, addressed to the Court by the Government of the United Kingdom against the Government of the People's Republic of Albania, is inadmissible, the Government of the United Kingdom having submitted the said Application contrary to the provisions of Article 40, paragraph 1, and Article 36, paragraph 1, of the Statute of the Court'.

The first submission relates to the Resolution of April 9, 1947, in which the Security Council recommended 'that the United Kingdom and Albanian Governments should immediately refer this dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court'. The Albanian Government accepted this recommendation and on the basis of its acceptance recognises its obligation to refer the dispute to the Court in accordance with the provisions of the Statute. It is true that this obligation could only be fulfilled in accordance with the provisions of the Statute. In recognising this fact in accordance with the request of the Albanian Government, the Court points out that that Government subsequently contracted other engagements, the date and exact scope of which will be established later.

The second submission of the Albanian Government, which is disputed by the Government of the United Kingdom, appears to constitute an objection on the ground of the inadmissibility of the Application. The intention of the Albanian Government, however, seems to be somewhat lacking in precision in this respect. When it refers, in its submissions, to Article 40, paragraph 1, of the Statute of the Court, the Albanian Government appears merely to have in mind a procedural irregularity resulting from the fact that the main proceedings were instituted by means of an Application instead of by a special agreement concluded beforehand. The Albanian Government, however, also refers to Article 36, paragraph 1, of the Statute, a provision which relates exclusively to the jurisdiction of the Court; and the criticisms which are directed against the Application of the United Kingdom in the text of the Preliminary Objection, relate to an alleged lack of compulsory jurisdiction as well as to the formal admissibility of the Application.

This argument may be explained by the connection which the United Kingdom Government, for its part, had made between the institution of proceedings by application and the existence, alleged by it in this case, of compulsory jurisdiction.

In support of its Application, the Government of the United Kingdom invoked certain provisions of the Charter of the United Nations and of the Statute of the Court to establish the existence of a case of compulsory jurisdiction. The Court does not consider

that it needs to express an opinion on this point, since, as will be pointed out, the letter of July 2, 1947, addressed by the Albanian Government to the Court, constitutes a voluntary acceptance of its jurisdiction.

The letter of July 2, 1947, in spite of the reservation stated therein, the exact scope of which will be considered later, removes all difficulties concerning the question of the admissibility of the Application and the question of the jurisdiction of the Court.

With respect to the first point, the Albanian Government, while declaring on the one hand that it ' would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the International Court by unilateral application, without first concluding a special agreement with the Albanian Government ', states, on the other hand, that ' it is prepared, notwithstanding this irregularity in the action taken by the Government of the United Kingdom, to appear before the Court '. This language used by the Albanian Government cannot be understood otherwise than as a waiver of the right subsequently to raise an objection directed against the admissibility of the Application founded on the alleged procedural irregularity of that instrument.

The letter of July 2, 1947, is no less decisive as regards the question of the Court's jurisdiction. Not only does the Albanian Government, which had already assumed certain obligations towards the Security Council by its telegram of January 24, 1947, declare in that letter that it ' fully accepts the recommendation of the Security Council ' to the effect that the dispute should be referred to the Court in accordance with the provisions of the Court's Statute, but, after stating that it is ' profoundly convinced of the justice of its case ', it accepts in precise terms ' the jurisdiction of the Court for this case '. The letter of July 2, therefore, in the opinion of the Court, constitutes a voluntary and indisputable acceptance of the Court's jurisdiction.

While the consent of the parties confers jurisdiction on the Court, neither the Statute nor the Rules require that this consent should be expressed in any particular form.

The Albanian contention that the Application cannot be entertained because it has been filed contrary to the provisions of Article 40, paragraph 1, and of Article 36, paragraph 1, of the Court's Statute, is essentially founded on the assumption that the institution of proceedings by application is only possible where compulsory jurisdiction exists and that, where it does not, proceedings can only be instituted by special agreement.

This is a mere assertion which is not justified by either of the

texts cited. Article 32, paragraph 2, of the Rules does not require the Applicant, as an absolute necessity, but only 'as far as possible', to specify in the application the provision on which he founds the jurisdiction of the Court. It clearly implies, both by its actual terms and by the reasons underlying it, that the institution of proceedings by application is not exclusively reserved for the domain of compulsory jurisdiction.

In submitting the case by means of an Application, the Government of the United Kingdom gave the Albanian Government the opportunity of accepting the jurisdiction of the Court. This acceptance was given in the Albanian Government's letter of July 2, 1947.

Besides, separate action of this kind was in keeping with the respective positions of the parties in proceedings where there is in fact a claimant, the United Kingdom, and a defendant, Albania.

Furthermore, there is nothing to prevent the acceptance of jurisdiction, as in the present case, from being effected by two separate and successive acts, instead of jointly and beforehand by a special agreement. As the Permanent Court of International Justice has said in its Judgment No. 12, of April 26, 1928, p. 23: 'The acceptance by a State of the Court's jurisdiction in a particular case is not, under the Statute, subordinated to the observance of certain forms, such as, for instance, the previous conclusion of a special agreement.'

The Security Council's recommendation has been relied upon to support opposite conclusions. But, in the first place, though this recommendation clearly indicates that the bringing of the case before the Court requires action on the part of the parties, it does not specify that this action must be taken jointly, and, in the second place, the method of submitting the case to the Court is regulated by the texts governing the working of the Court as was pointed out by the Security Council in its recommendation.

The Court cannot therefore hold to be irregular a proceeding which is not precluded by any provision in these texts.

The scope of the reservation formulated in the letter of July 2, 1947, has still to be considered. The reservation is as follows: 'Nevertheless, the Albanian Government makes the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court in application of the Security Council's recommendation and more especially respecting the interpretation which that Government has sought to place on Article 25 of the Charter with reference to the binding character of the Security Council's recommendations. The Albanian

Government wishes to emphasise that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future.'

This reservation is the only limit set by the Albanian Government either to its acceptance of the Court's jurisdiction, or to its abandonment of any objection to the admissibility of the proceedings. It is for the Court to decide, with binding force as between the parties, what is the interpretation of the letter of July 2, 1947. It is clear that the reservation contained in the letter is intended only to maintain a principle and to prevent the establishment of a precedent as regards the future. The Albanian Government makes its reservations—both as to the manner in which the United Kingdom Government has instituted the proceedings, and as to the interpretation which that Government claimed to give to Article 25 of the Charter with a view to establishing the Court's compulsory jurisdiction—not for the purposes of the present proceedings, but in order to retain complete freedom of decision in the future. It is clear that no question of a precedent could arise unless the letter signified in the present case the acceptance of the Court's jurisdiction on the merits.

The reservation in the letter of July 2, 1947, therefore does not enable Albania to raise a preliminary objection based on an irregularity of procedure, or to dispute thereafter the Court's jurisdiction on the merits.

FOR THESE REASONS, while placing on record the declaration contained in the first submission of the Albanian Government, but subject to the explicit reservation of the obligations assumed by that Government in its letter of July 2, 1947,

THE COURT, by fifteen votes against one,

(1) rejects the Preliminary Objection submitted by the Albanian Government on December 9, 1947;

(2) decides that proceedings on the merits shall continue and fixes the time-limits for the filing of subsequent pleadings as follows:

(a) for the Counter-Memorial of the Albanian Government, Tuesday, June 15, 1948;

(b) for the Reply of the United Kingdom Government, Monday, August 2, 1948;

(c) for the Rejoinder of the Albanian Government, Monday, September 20, 1948.

The present judgment has been drafted in French and English, the French text being authoritative.

(*Signed*) J. G. Guerrero,
President.
(*Signed*) Edvard Hambro,
Registrar.

Judges Basdevant, Alvarez, Winiarski, Zoričić, De Visscher, Badawi Pasha, Krylov, whilst concurring in the judgment of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the judgment a statement of their separate opinion.

M. Daxner, judge *ad hoc*, declaring that he is unable to concur in the judgment of the Court, has availed himself of the right conferred on him by Article 57 of the Statute and appended to the judgment a statement of his separate opinion.

Separate opinion by Judges Basdevant, Alvarez, Winiarski, Zoričić, De Visscher, Badawi Pasha and Krylov.

[Translation.]

Whilst concurring in the judgment of the Court, we feel obliged to state that we should have wished the Court to have passed upon the merits of the claim of the Government of the United Kingdom to treat the present case as one falling within the compulsory jurisdiction of the Court. Since the Application was based upon this claim and since the claim, if well-founded, would, in itself, have justified recourse to this method of instituting proceedings without there having been any need to consider the effect of the letter of July 2, 1947, it appears to us that, logically, the question of compulsory jurisdiction falls to be dealt with first of all.

This question has been discussed at length both in the pleadings and during the oral proceedings. It arose because we were faced here with a procedure which, regarded as a whole, is the outcome of an innovation in the Charter of the United Nations. Under the régime of the Charter, the rule holds good that the jurisdiction of the International Court of Justice, as of the Permanent Court of International Justice before it, depends on the consent of the States parties to a dispute. But Article 36 of the Charter has made it possible for the Security Council to recommend the parties to refer their dispute to the International Court of Justice in accordance with the provisions of the Court's Statute. The Security Council, for the first time, availed itself of this power on April 9, 1947. The contentious procedure, recourse to which the Security Council thus

recommended, involves, in order that the Court may be seized of the case, certain action by the parties or, possibly, by one of them. Faced with this new solution, the Governments concerned had different views as to the effect of the recommendation and, consequently, as to the method to be adopted in bringing the case before the Court.

The Government of the United Kingdom held, on various grounds deduced by it from the provisions of the Charter and Statute, that this was a new case where the compulsory jurisdiction of the Court existed. Accordingly, it instituted proceedings by Application and cited in its Application the provisions of the Charter and Statute on which it founded the Court's jurisdiction.

The arguments presented on behalf of the United Kingdom to establish that this was a new case of compulsory jurisdiction—which arguments the Agent and Counsel for the Albanian Government sought to refute—have not convinced us. In particular, having regard (1) to the normal meaning of the word recommendation, a meaning which this word has retained in diplomatic language, as is borne out by the practice of the Pan-American Conferences, of the League of Nations, of the International Labour Organisation, etc., (2) to the general structure of the Charter and of the Statute which founds the jurisdiction of the Court on the consent of States, and (3) to the terms used in Article 36, paragraph 3, of the Charter and to its object which is to remind the Security Council that legal disputes should normally be decided by judicial methods, it appears impossible to us to accept an interpretation according to which this article, without explicitly saying so, has introduced more or less surreptitiously, a new case of compulsory jurisdiction.

On this point, the view maintained on behalf of the Albanian Government appears to us well-founded, but when that Government claims to argue therefrom that in this case the institution of proceedings by application was irregular, then we are unable, for the reasons given in the judgment, to accept this argument.

Dissenting opinion by Dr. Igor Daxner.

I am unable to concur in the present judgment on the Preliminary Objection submitted by the Government of the People's Republic of Albania in the Corfu Channel case.

Of the many different points in the judgment upon which I differ from the Court, I shall confine myself to referring to certain of the more important in the opinion which follows:

I. In support of its Application, the Government of the United

Kingdom invoked certain provisions of the Charter of the United Nations and of the Statute of the Court to establish in the present case the existence of a case of compulsory jurisdiction. The Court does not consider that it needs to express any opinion on this point, since, according to the Court, the letter of July 2, 1947, addressed by the Albanian Government to the Court, constitutes a voluntary acceptance of its jurisdiction.

In the opinion of the Court, the letter of July 2, 1947, in spite of the reservation made therein, the exact scope of which the Court considers later, removes all difficulties concerning the question of the admissibility of the Application and the question of the jurisdiction of the Court.

It was contended by the Government of the United Kingdom that the recommendation made by the Security Council under Chapter VI of the Charter, and more particularly under Article 36, paragraph 3, is ipso facto obligatory for the parties to whom it is addressed. The compulsory jurisdiction of the Court would thus be established in virtue of the recommendation of April 9 for the United Kingdom and Albania in the present case. Special stress was laid in this connection by the representative of the United Kingdom on Article 25 of the Charter, the recommendation under Article 36 (3) of the Charter being construed in virtue of Article 24 (2) of the Charter as decisions of the Security Council of obligatory character.

In my opinion such a construction of Article 25 of the Charter and, in general, the obligatory character of a recommendation under Article 36 (3) of the Charter, is inadmissible.

The term 'recommendation' as used by the Charter is by no means a new one. It appeared especially in the Covenant of the League of Nations. The voluntary and not obligatory character of a recommendation made by the Council of the League, even unanimously, was expressly defined in Advisory Opinion No. 12 of the Permanent Court (pp. 27–28). The recommendations put forward by the Assembly of the League were called in French '*les vœux*' (see Albanian document, Annex No. 2). All commentators on the work of the League of Nations agree that there was no obligatory force (see Lauterpacht, M. Ray).

The term 'to recommend' was described by a distinguished Frenchman as follows: 'ce n'est pas proposer, c'est encore moins ordonner, ce n'est pas indiquer. C'est faire une recommandation dans le sens français du mot, mais un peu pressante. . . .' (Doyen Larnaude, p. 37 de la publication: *La Société des Nations*, Paris, 1920.) The meaning thus attached to the word 'recommendation'

does not permit it to be regarded as an obligatory decision. Moreover, the Covenant distinguished between a 'decision' (Article 5 of the Covenant) and a 'recommendation' (see, for instance, Article 15), and the Charter of the United Nations also makes a distinction (see Articles 39, 40, 'Security Council shall make recommendations or decide what measures. . .', Article 94, paragraph 2, of the Charter).

The Albanian documents (see especially Annexes 1, 4, 5, 6, 7) submitted to the Court some evidence of a general consensus of opinion prevailing as regards the voluntary character of recommendations made under Chapter VI of the Charter. More documentary evidence could easily be found. I would recall only that the official British commentary on the Charter (H.M. Stationery Office, Cmd. 6666, p. 8) makes no mention of any compulsory character attaching to Chapter VI of the Charter.

Some authoritative statements were made already during the San Francisco Conference concerning the voluntary character of recommendations (see Belgian amendment in this connection as reproduced in Vol. XII, p. 66, of the official edition of the San Francisco Conference, and in the same sense also Vol. XI, p. 84). Some documentary evidence directly concerns the voluntary character of Article 36 (3) of the Charter (see *op. cit.*, Vol. XII, pp. 108–109, p. 137).

The *travaux préparatoires* of the San Francisco Conference establish also that Article 25 of the Charter must not be applied indifferently as meaning ipso facto 'obligatory decisions'. Referring to the Belgian amendment, it was emphasised at the Conference 'that the Charter must be construed in its entirety' and that 'there were special provisions which would override general provisions' (*op. cit.*, Vol. XI, p. 375). The British representatives contended that Article 25 would have no sense and efficiency if the recommendations made under Chapter VI of the Charter were not obligatory decisions. They overlooked that Chapter VII of the Charter is of the greatest importance in view of the functions of the Security Council, and that the specific powers granted the Security Council as laid down in Chapter VII include the power to take decisions which are obligatory and must be carried out by members.

The character of recommendations made by the Security Council under Chapter VI of the Charter being purely voluntary, it is evident also that the recommendation, addressed under Article 36 (3) of the Charter by the Security Council to the Governments of the United Kingdom and Albania on April 9, 1947, could not involve any obligation for both Governments to go before the

Court and that no question whatsoever of the compulsory jurisdiction of the Court can be raised in the present case in virtue of Article 36 (3) or any other article of the Charter.

II. The foregoing point must be considered as of special importance in view of the question of the admissibility of the British Application of May 13.

According to Article 40 (1) of the Statute, 'cases are brought before the Court, *as the case may be*, either by the notification of the special agreement, or by written application'. There was no question whatsoever of a special agreement between the Governments of Albania and of the United Kingdom, not even if the term special agreement should be construed as a concluding fact or in some other non-formal way. The United Kingdom Government was therefore by no means in a position to notify the Court of an agreement reached with Albania to bring the case before the Court. Was then the United Kingdom Government justified in bringing the case before the Court by means of a 'written application'? Article 40 of the Statute does not of itself say expressly which is the case for application. But it should not be difficult to understand that this is the procedure where there is compulsory jurisdiction. There cannot be any doubt that 'the notification of the special agreement' which Article 40 (1) of the Statute has in view, covers the cases of voluntary, optional jurisdiction. In the terms of Article 36 (1) of the Statute, there are 'all cases which the parties refer to the Court'. The compulsory jurisdiction of the Court is another part of its jurisdiction. In the words of Article 36 (1) of the Statute, under this jurisdiction fall '. . . all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force'. The notification of the special agreement covering, according to Article 40 of the Statute, the cases of optional jurisdiction, the application, *requête*, appears necessarily to be the formal instrument to bring before the Court the matters of compulsory jurisdiction.

In my opinion, there was never any serious doubt on this point. The *travaux préparatoires* in connection with Article 40 of the Statute point out that the words 'as the case may be' (*selon le cas*) were intended to cover the following two cases: (1) 'la Cour est saisie unilatéralement par une des parties; (2) il y a un accord spécial entre les parties' (cf. p. 368, *Procès-verbaux des Séances de la Troisième Commission, Première Assemblée, S. d. N.*). The documents submitted on behalf of the Albanian Government to the Court include under Annex 12 the opinions of some judges of the Permanent Court and of the Registrar which, in 1926, confirm

that 'the Court on the basis of Article 40 of the Statute, had always called *requête* the document instituting proceedings filed by a party which claimed that the Court had compulsory jurisdiction in regard to the subject of a dispute; the corresponding word in English had been "application"'. (Permanent Court, Series D., Add. 2, pp. 177 *et sqq.*) It was always so held by the Permanent Court, as, *e.g.*, the Revision of the Rules 1934–1936 *passim* confirms.

In spite of the documentary evidence in this sense, all this is, according to the judgment, only 'a mere assertion which is not justified' either by Article 40 (1) or Article 36 (1) of the Statute. According to the judgment, Article 32 (2) of the Rules of Court, which contains the phrase 'as far as possible', 'clearly implies both by its actual terms and by the consideration which inspired its framing, that the institution of proceedings by application is not exclusively reserved for the domain of compulsory jurisdiction'. In my opinion, Article 32 (2) of the Rules cannot be considered as supporting such a view. The *ratio legis* of this provision as concerns the words 'as far as possible', was to make possible the institution of the *forum prorogatum*; this was the reason why it was thought not desirable to insist on the application containing reference to the treaty clause upon which it was based. (See among the Albanian documents submitted to the Court Annex 14, especially pp. 69, 157, of the *Publications of the Permanent Court*, Series D, Third Addendum to No. 2.) The fact that the application should, as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court, is not sufficient in itself to decide the question of the admissibility or inadmissibility of the application. Article 32 (2) prescribes all formal points which an application either must or should contain. It does not say that an application which does not specify the provision presumably founding the jurisdiction of the Court, is inadmissible; on the other hand, it does not follow from Article 32 (2) of the Rules that the application which thus specifies the presumed jurisdiction of the Court, is ipso facto admissible. To decide the question, whether a case has been duly brought before the Court, Article 40 (1) of the Statute must be taken into consideration. Only if this Article did not specify that 'cases are brought before the Court, *as the case may be*' (*selon le cas*), would it be possible to assert that an application can be presented to the Court even in a case of optional jurisdiction.

Since cases of compulsory jurisdiction are brought before the Court, according to Article 40 of the Statute, by means of an

application, the point is made that the British application of May 13, 1947, was prima facie irregular.

III. The only way which was open to the Government of the United Kingdom was to submit the dispute to the Court in agreement with Albania, unless the Albanian Government gave its consent to the application *a posteriori*. I will mention this point later on, in connection with the letter of July 2.

It is to be presumed that the Resolution of the Security Council of April 9 must be in harmony with the above-mentioned requirements of Article 40 of the Statute, since a recommendation of the Security Council under Article 36 (3) of the Charter cannot deviate from the terms of the Statute of the Court.

Now the Resolution of April 9 recommends the Governments of the United Kingdom and Albania to submit their dispute to the Court 'in accordance with the provisions of the Statute of the Court'. It is easily understood that the recommendation could not propose to the said Governments any procedure other than the only valid procedure, *i.e.*, 'in accordance with the Statute'. The recommendation of April 9 necessarily again confronts both Governments with Article 40 of the Statute and points to the 'notification of the special agreement' as being the only way in which the dispute can be brought before the Court, there being no provision of compulsory jurisdiction upon which either the United Kingdom or Albania could rely.

As proceedings could not be instituted before the Court by unilateral application, the acceptance of the recommendation by the Albanian Government in the letter of July 2 could not, and did not, by itself in any way affect the position regarding the admissibility of the British Application of May 13.

It should also be evident that the acceptance of the recommendation by the Albanian Government on July 2 did not by itself implement the recommendation. The Governments of Albania and the United Kingdom having both accepted the recommendation of April 9, are from now on bound to submit the dispute to the Court 'according to the provisions of the Statute'. A *pactum de contrahendo* is established between them from now on to bring the dispute before the Court by appropriate means; but the dispute is not yet brought before the Court by these reciprocal promises. A dictum of Lord Phillimore of 1920, which concerns Articles 13 and 14 of the Covenant, is to be found: '. . . a clear distinction should be drawn between the duty one has to submit a case to the Court and the means by which this submission should be carried out: Article 13 establishes the obligation of submitting disputes. Article 14 states—here he based his argument on the English text—

that the consent of both parties is necessary before the case can be dealt with '. The dictum of Lord Phillimore can be applied exactly to the present case. The recommendation of April 9 establishes the obligation of the United Kingdom and Albania to submit their dispute to the Court ' according to the provisions of the Statute of the Court ', *i.e.*, according to its Article 40, the consent of both parties being necessary before the case can be dealt with by the Court.

In this connection, the term ' by the parties ' which occurs in Article 36 (3) of the Charter, should also be mentioned. It was the Norwegian amendment which brought these words into Article 36 (3), and the documentary evidence of the San Francisco Conference shows that it was done ' in order to make it perfectly clear that the Security Council had no right or duty to refer justiciable disputes to the Court '. (*Op. cit.*, Vol. XII, p. 137.)

The point was made, on behalf of the Albanian Government, that the term ' the parties ' does not imply the right of one party to summon another to appear before the Court, but ' that the consent of both parties is necessary before a case can be taken before the Court ' (see Lord Phillimore in Annex 2 of the Albanian document). The phrase in Article 36 (3) of the Charter ' according to the Statute ' on the one hand, and the phrase ' by the parties ', on the other hand, are in perfect harmony and mutually complementary.

The consent of the parties to the dispute which is necessary in order correctly to implement the recommendation and to bring the case before the Court in conformity with Article 40 of the Statute, may be reached and expressed in a different way. As the Permanent Court stated in Judgment No. 12: ' The acceptance by a State of the Court's jurisdiction in a particular case is not, under the Statute, subordinated to the observance of certain forms, such as, for instance, the previous conclusion of a special agreement '. (P. 23, *l.c.*) On the other hand, there cannot be any doubt that the consent of the parties to the dispute must be obtained and expressed with necessary precision.

IV. It is from this point of view that, in my opinion, the Albanian letter of July 2, 1947, should be read.

First, I must point out that it is necessary to make a clear difference between two notions:

1. Ability to appear before the Court;
2. Competence of the Court.

Ability to appear before the Court depends on the fulfilment of two conditions: (a) only States (Article 34 (1) of the Statute) and not other juridical nor physical persons may appear before

the Court; (b) such States must be parties to the Statute, *i.e.*, must accept the jurisdiction of the Court.

According to Article 35 (1) of the Statute, 'the Court shall be open' to these States.

Other States which—because they are not parties to the Statute—have not accepted the jurisdiction of the Court, are not admitted to appear before the Court. In order to render it possible for States which are not parties to the Statute also to be admitted to appear before the Court, Article 35 (2) of the Statute lays down that any such State will acquire the ability to do so on condition (in conformity with the Resolution of the Security Council of October 15, 1946) that it accepts the jurisdiction of the Court. Such a declaration should be made at the moment of the notification of its Agent (Article 36 of the Rules).

Accordingly, for every State which is not a party to the Statute, the acceptance of the jurisdiction of the Court is a preliminary condition to be able to appear before the Court. Such a State acquires by this declaration all rights and is subject to all obligations, which, in the case of parties to the Statute derive from the Statute and Rules because they are parties to the Statute. As, in conformity with Article 62 of the Rules, parties to the Statute have the right to present any preliminary objection, this right also belongs to States not parties to the Statute as soon as they have accepted the jurisdiction of the Court. Were it not so, then the fundamental principle of the full equality of the parties would be violated.

In my opinion, the word 'jurisdiction' has two fundamental meanings in international law. This word is used :

(1) to recognise the Court as an organ instituted for the purpose *jus dicere* and in order to acquire the ability to appear before it;

(2) to determine the competence of the Court, *i.e.*, to invest the Court with the right to solve concrete cases.

In the first meaning, the word jurisdiction has been used in the Protocol of Signature of December 16, 1920. By this Protocol, the States accepted 'the jurisdiction of the Court', but nobody has ever been of the opinion that this should be construed as acceptance of the compulsory jurisdiction of the Court for a concrete case. With the same meaning, the word jurisdiction has been used in the Resolution of the Council of the League of Nations of May 17, 1922, as well as in the Resolution of the Security Council of October 15, 1946. According to these resolutions, the acceptance of the jurisdiction of the Court is a *preliminary* condition to be able to appear before the Court. By this act (declaration), the competence of the

Court is not of course yet established. The condition for the establishment of the competence of the Court is a special agreement (*compromis*) or the acceptance of the compulsory jurisdiction in treaties or conventions (Article 36 (1) and 36 (2) of the Statute). Accordingly, a State not a party to the Statute which recognises the jurisdiction of the Court by this fact acquires the juridical position of all other States parties to the Statute. In particular, such a State has the right to present a preliminary objection on the ground of 'the inadmissibility of the application', because the recognition of the jurisdiction, in order to acquire ability to appear before the Court, does not involve ipso facto recognition of the Court's competence.

It is true that, according to my opinion, it may happen that a State which makes a declaration in conformity with the Resolution of the Security Council of October 15, 1946, is either directly cited by an application (*requête*) or itself directly cites another State which recognises the jurisdiction of the Court, in spite of the fact that this had not yet been established. But it is evident that in such a case, the cited party can successfully present a preliminary objection to the competence of the Court. On the other hand, such a State cited by means of an application which is not valid can either expressly confer validity on the application by accepting the competence or simply argue the merits of the case without raising any objection. In both cases (the acceptance *expressis verbis* or tacit) the competence will be established and the written application will be made valid.

But this validity does not derive from the recognition of the jurisdiction (which for a State not a party to the Statute is a preliminary condition to appear before the Court), but on the contrary, the competence is established by the fact that a State has expressly made valid the written application, or has commenced the argument of the case on the merits *without raising any objection.*

The letter of July 2 appears, in the light of these considerations, as a recognition of the jurisdiction of the Court for the purpose of enabling Albania to appear before it (*se présenter devant la Cour*).

As the Albanian Government at the same time have made 'the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court', it is evident that by these reservations this Government have retained the right to oppose the 'admissibility' of the written application within the time fixed by Article 62 of the Rules of Court.

The Albanian Government had pointed out that it 'would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court by

unilateral application '. This sentence is to be found at the end of the third paragraph of the above-mentioned letter. The first three paragraphs briefly indicate the meaning of the Resolution of the Security Council of April 9 and the means by which the dispute should have been brought before the Court in conformity with this Resolution. In the opinion of the Albanian Government a special agreement was clearly necessary for this purpose.

As a consequence of the reasons given in the first three paragraphs, the Albanian Government declares that it ' would be within its rights . . . ', etc. The explanation of these words is very clear and simple: the Albanian Government would have been able to proceed, as if the written application had not been made, *i.e.*, this Government would have been able completely to ignore it and not to appear before the Court. By this sentence the Albanian Government evidently desired to point out its potential right not to take into consideration the British application which it considered null and void. The conditional mood was rightly used in that sentence to express this attitude on the part of the Albanian Government, because the conditional is the only grammatical form which expresses a possibility. Such a possibility really existed on July 2 for the Albanian Government, but that Government did not use its right completely to ignore a null and void application.

Let us examine why Albania, in spite of its right to ignore the application, agreed to appear before the Court. As a small country of scarcely a million inhabitants, Albania could not, by its refusal, adopt a position which might have been easily adopted by a great Power, such as England for instance, in a similar case. Moreover, in the eyes of the world, Albania has hitherto been considered (wrongly of course) as one of the countries of the Balkans, so often described as the ' powder-keg ' of Europe. Its refusal to appear before the Court would have contributed to confirm this unfounded reputation as a backward country which refused to recognise the institutions of the civilised world by an act which might have been interpreted as involving contempt of Court. In such circumstances, therefore, Albania chose not to invoke its right, as a Great Power might easily have done without incurring the criticism of the world, and agreed to appear before the Court.

Therefore it decided to appear before the Court in spite of this irregularity; but it reserved to itself the right to present the preliminary objection against the irregularity of the United Kingdom's Application. The Albanian Government has exercised this right so reserved within the time fixed by Article 62 of the Rules.

In order to avail itself of its reservations, *i.e.*, in order to be able to present the preliminary objection to the Court, Albania

had first to appear before the Court, that is to say, it had to accept the jurisdiction of the Court. As pointed out above, it is evident that a State not a party to the Statute cannot appear before the Court without having previously made such a declaration. In the present case, taking into consideration the whole contents of the letter of July 2, and especially the explicit reservations of the Albanian Government, the recognition of the jurisdiction of the Court is for the purpose of enabling it 'to appear before the Court'.

The recognition of the jurisdiction of the Court consequently confers ability to be a party in the present case and thereby enables effect to be given to the declaration: 'is prepared . . . to appear before the Court'.

As the Albanian Government would have had the right to ignore the United Kingdom Application, but decided to appear before the Court, in spite of the irregularity of this Application, and to attack this irregularity before the Court, it considered it necessary to point out that its recognition of the jurisdiction of the Court 'cannot constitute a precedent for the future'. This in effect means that the Albanian Government reserved the right not to reply, to ignore completely any identical or similar written applications, which in future might be directed against her.

I do not find any other meaning in the letter of July 2 than that which I have tried to define, being anxious to avoid any interpretation which would conflict with the facts.

V. Since the judgment places such importance on the interpretation of the letter and the reservations contained therein, I shall now examine these reservations in greater detail.

According to the judgment, it is the letter of the Albanian Government of July 2, 1947, which removes all difficulties, both regarding the question of the admissibility of the Application and the question of the Court's jurisdiction.

The judgment gives on page 28 its explanation why this is the case 'in spite of the reservations stated' in the letter of July 2. The judgment examines here 'the scope of the reservations'. In its view, 'this reservation is the only limit set by the Albanian Government either to its acceptance of the Court's jurisdiction, or to its abandonment of any objection to the admissibility of the proceedings'. And the judgment holds the following opinion concerning this reservation: 'It is clear that the reservation contained in the letter is intended only to maintain a principle and to prevent the establishment of a precedent as regards the future.' The conclusion is: 'The reservation in the letter of July 2, 1947, therefore, does not enable Albania to raise a preliminary objection

based on an irregularity of procedure, or to dispute thereafter the Court's jurisdiction on the merits.'

In my view, the judgment passes over this important question of the reservation in a more than summary and very incomplete way.

The reservation is expressed in a special sentence and in the present tense of the indicative mood: 'the Albanian Government makes . . . reservations'. The sentence immediately follows the declaration also expressed in the present tense of the indicative mood that the Albanian Government 'is prepared, notwithstanding this irregularity in the action by the Government of the United Kingdom, to appear before the Court'. The reservation is immediately connected to this preceding sentence by the word 'Nevertheless'. A sentence starting with 'Nevertheless' is surely not one standing by itself but presupposes a preceding one.

Neither in the sentence containing the reservation nor in the preceding one, is there any allusion whatsoever to a future case. Also there is not the slightest indication that the reservation which the Albanian Government makes, should not have its effect in the present case. The reader passes from the preceding phrase to the reservation without observing any difference in time in these two phrases. The Albanian Government is ready to go before the Court, 'Nevertheless' at the same time it expresses some reservation.

Such a grammatical and logical meaning of these sentences of the letter of July 2 appears so natural that, in fact, the judgment cannot quote anything from them in support of its assertion that the reservation was meant only to apply to a new case in the future. It is only in the following phrase starting with the words 'The Albanian Government wishes to emphasise . . .' that the judgment believes it finds the grounds for its interpretation.

Now it happens that this, in the view of the judgment, 'very important phrase beginning with the words "The Albanian Government wishes to emphasise" . . .' does not mention the reservation expressed in the preceding phrase, in any way. The whole phrase refers only to the 'acceptance of the Court's jurisdiction in the present case' and says that it should not be considered in the future as a precedent. Manifestly the acceptance of the jurisdiction of the Court for the present case and a reservation expressed and concerning two special points of the case, are two different things. The phrase refers only to the acceptance of the jurisdiction of the Court for the present case and does not refer to the reservation.

The question may also be raised whether there would have been

any point in making the reservations which were formulated merely in view of a new case in the future. The reservations are made in respect of the Application of the United Kingdom of May, 1947, concerning a concrete and unique case and in respect of definite special grounds put forward to support it, and the reservations cannot apply to any other case. In any other new case, new reservations must necessarily be made, which must be formulated afresh as the new case may require.

In this connection, it must also be taken into consideration that the whole phrase beginning with the words 'The Albanian Government wishes to emphasise . . .' does not contain any definite provision of law at all and is to be appreciated rather as a political and diplomatic declaration.

The acceptance of the jurisdiction of the Court in one particular case, evidently cannot serve as a legal, binding precedent for any future case. Also the phrase follows the preceding phrase only as a sort of addendum.

The conclusion is: if the reservation expressed in the letter of July 2 is to have any meaning, it must not be considered in the light of another phrase referring to a new case in the future, but rather in its proper place and context and with due regard to its purpose in the present case.

The final phrase of paragraph 3 of the letter of July 2 beginning with the words 'In these circumstances, the Albanian Government would be within its rights . . .' does not weaken in any way the reservation under discussion and expressed later in paragraph 4 of the letter.

It is agreed that the United Kingdom Application of May 13 could be made valid by means of consent to it given by the Albanian Government, even *a posteriori*. The judgment expresses the opinion that the letter of July 2 declared such an intention of the Albanian Government. The judgment quotes, on this point, the phrase of the letter 'The Albanian Government would be within its rights' and the phrase 'it is prepared, notwithstanding this irregularity . . .' and comes to the conclusion: 'This language used by the Albanian Government cannot be understood otherwise than as a waiver of the right subsequently to raise an objection directed against the admissibility of the Application founded on the alleged procedural irregularity of that instrument.'

It is evident that such a conclusion is made possible only by a complete disregard of the reservation expressed in the letter of July 2. As soon as the reservation is recognised as operative in the present case, the Application cannot be considered as validated. The reservation is made in order to limit the acceptance of the

jurisdiction of the Court by the Albanian Government and it excludes a *forum prorogatum* on the basis of an irregular application, which was not subsequently made valid.

To the foregoing observations, I wish to add only the following: In view of my reading of the letter of July 2, I was not obliged to make use of the rules of interpretation *in dubio stricto sensu*, etc., the rules which should undoubtedly be applied, if necessary, in the present case. On the other hand, it would be well for the majority of the Court to read and interpret the letter of July 2 *stricto sensu*. But it is sufficiently manifest that these rules of interpretation were not applied.

Conclusion:

As, according to my opinion, the British written Application was irregular *ab initio*, and as the Albanian Government has not either *expressis verbis* or tacitly done anything to make the application valid, I consider that the Court *for the time being* is not competent to judge the merits and that the preliminary objection should have been upheld.

ENEMY ALIEN RENDERED STATELESS BY DECREE OF ENEMY GOVERNMENT. ADMISSIBILITY OF APPLICATION FOR EXTENSION OF PATENT UNDER PATENTS AND DESIGNS ACTS

Lowenthal v. *Att.-Gen.*

(Chancery Division, January 28, 29, 1948)

The Facts.

Two German Jews came to England in 1933 and 1934 respectively with the intention of residing there permanently. In 1937 they were granted permits to reside in England, subject to a time condition, which was subsequently cancelled. In 1938 and 1939 they respectively lodged with the Home Office applications for naturalisation but, as the result of war conditions which shortly intervened, these applications were held over. In 1933 they promoted the formation of a company, of which the whole capital was held by them equally.

The German Government enacted a decree on November 25, 1941, providing that a Jew who had his ordinary residence outside Germany could not be a German national, and that he lost German nationality on the coming into force of the decree if, on that date, he had his ordinary residence outside Germany. That decree was never revoked and no law subsequently enacted by the German Government altered the position of these two persons.

On April 28, 1944, the company applied by summons under section 18 of the Patents and Designs Acts, 1907–46, for an order extending a patent which belonged to them. In the course of the hearing the objection was raised that, as they were subjects of a foreign State the company was, having regard to the provisions of subsection (6), not entitled to present the application. By section 18 (1) it was provided: 'Where, by reason of hostilities between His Majesty and any foreign State, the patentee as such has suffered loss or damage . . . an application under this section may be made. . . . Provided that this subsection shall not apply if the patentee is a subject of such foreign State as aforesaid, or is a company the business whereof is managed or controlled by such subjects, or is carried on wholly or mainly for the benefit or on behalf of such subjects, notwithstanding that the company may be registered within His Majesty's dominions'. They therefore commenced an action against the Attorney-General (in which the company was also joined as a plaintiff) claiming that since November 25, 1941, each of them had been a Stateless person and had not, since that date, been the subject of a foreign State, between which and His Majesty hostilities existed or had existed; and also claiming a declaration that the company was not and had not been since November 25, 1941, a company, the business whereof was carried on for the benefit of subjects of a foreign State between which and His Majesty hostilities existed or had existed.

The Judgment.

Romer, J., said that the true object of the action was to obtain a declaration which would enable the plaintiffs to proceed with their application for the extension of their patent. After stating the facts, his Lordship said that it seemed to him that, so far as this court, at all events, was concerned, the matter was concluded against the plaintiffs by a judgment of the Divisional Court on the same decree in *The King* v. *The Home Secretary; ex p. L.* ([1945] K.B. 7). It had been submitted to him that that case contained some observations which were obiter. His Lordship then read that judgment and said that the case of the personal plaintiffs before him was founded on this, that, whereas, before the date of the decree of 1941, they were admittedly German nationals, the decree stripped them of that nationality and rendered them stateless, in which case it could not be said of them thereafter that they were subject to the disabilities imposed on them by subsection (6) of section 18 of the Patents and Designs Acts, 1907–46. It seemed to him that that was substantially the case of the applicants in *Ex p. L.* (*supra*). Their claim to freedom was advanced on the view

that the decree under consideration had, by removing the nationality itself, removed the disabilities which that nationality entailed. The court accordingly had to inquire whether the decree had removed these restrictions on their freedom by destroying the nationality, which had attracted them. The result of that inquiry was negative, for the reasons stated in the judgment. He (his Lordship) was unable to regard any of the observations in that judgment as obiter, and even if they were he would not be justified in departing from them unless (which was far from being the case) he were convinced of their inaccuracy. He accordingly proposed to apply the observations of the learned Lord Chief Justice in that case; and there were only two remarks which he would like to make. The first was that it would be a curious anomaly if, by reason of foreign legislation, an individual were, on grounds of enemy status, to be subject to some disqualifications affecting enemy aliens here, but concurrently free from others. The second was that it was a reasonable conception that such disqualifications should be removed, if they were removed at all, by the Parliament of this country and not by the Government of a foreign State, and a fortiori a foreign hostile State. For these reasons it appeared to him that he had no alternative but to dismiss the plaintiffs' claim, which was founded on a change of nationality brought about by the decree of 1941.

[As reported in *Weekly Notes*, February 14, 1948, p. 66.]

WHETHER TERMINATION OF HOSTILITIES WITH GERMANY AN 'ARMISTICE'

Re Orchard; Carpenter v. *Lauer*

(Chancery Division. Jan. 16, 1948)

The Facts.

By her will dated November 23, 1940, the testatrix appointed the plaintiff to be executor and trustee thereof and to stand possessed of part of her residuary estate upon certain trusts to take effect 'in the event of an armistice having been concluded between Great Britain and Germany in the present war before the date of my death'. She declared certain alternative trusts to take effect in the event of no such armistice having been so concluded. In a subsequent part of her will she referred to 'the event of an armistice as aforesaid not having been arranged' prior to her death. She died on September 6, 1945. The present summons raised the question whether an armistice had been concluded between Great Britain and Germany in the lifetime of the testatrix or not.

The Judgment.

Vaisey, J., said that the unconditional surrender offered (as it was) by Germany and accepted (as it was) by Great Britain in the month of May, 1945, resulted in an ' armistice ', that was to say a laying down of arms, within the meaning of the will. The idea that no armistice resulted from an unconditional surrender was ill founded in the sense in which that word was used in this will. A cessation of hostilities for a short and limited time for a specified purpose, as, for example, for the burial of the dead, probably would not have been the kind of armistice of which the testatrix was speaking. Where, as here, there was a cessation of active hostilities for an indefinite time, in such circumstances as gave rise to a general expectation that they would not be resumed, and the cessation was intended and expected to be preliminary to the permanent laying down of arms, there was an ' armistice ' in the sense in which the testatrix used the word. An accepted surrender was, in that sense, an armistice. He held that there was an armistice between Great Britain and Germany prior to the death of the testatrix within the meaning of her will.

[Reported in *Weekly Notes*, February 7, 1948, p. 54.]

NULLITY. JURISDICTION IN DIVORCE. RESPONDENT'S DOMICILE

de Reneville (otherwise *Sheridan*) v. *de Reneville*

Judgment on Appeal.

On appeal from the judgment of Jones, J. (Probate, Divorce and Admiralty Division, May 22, 1947),[1] the Court of Appeal (Lord Greene, M.R., Bucknill and Somervell, L.JJ.) on December 17, 1947, delivered written judgments dismissing the appeal. In order to save expense the court delivered judgment on the basis of alternative positions; that the marriage would be (a) void; (b) voidable by the law of France (which they held to be the applicable law) if the petitioner established (i) impotence, or (ii) wilful refusal of the respondent. Only in the event of French law treating the marriage as void ab initio, in the sense that the parties could ignore it, and that any court would treat it as void without any decree of nullity, could the English court have jurisdiction based on domicile, for only in that case would the petitioner have failed to acquire her husband's French domicile. In every other case the marriage must be treated as valid until avoided by a decree, and such decree could not be regarded as retroactive so as to give the petitioner a domicile other than that of her husband at the time of presentation of the

[1] See *International Law Quarterly*, Vol. 1, p. 369.

petition. The only question, therefore, on this part of the case was whether it was right to give the petitioner a further opportunity of alleging and proving the voidness of the marriage by French law. This, until the contrary was proved, must be assumed to be the same as English law, under which—notwithstanding the somewhat inappropriate form of decree still in use—the marriage was voidable, not void. [After hearing argument, the court decided that no further opportunity should be given, especially as the courts of France afforded a convenient tribunal, and there was no hardship.]

It was, however, argued that jurisdiction in nullity might be founded on residence, not on domicile. In *Hutter* v. *Hutter*, [1944] P. 95, Pilcher, J., exercised jurisdiction on the ground of the residence of both parties within the jurisdiction; but that case was no authority for the proposition that residence of the petitioner alone was sufficient, especially where the respondent objected to the jurisdiction. In so far as *Roberts* v. *Brennan* ([1902] P. 143) and *Robert* v. *Robert* ([1947] W.N. 162, and 63 T.L.R. 343) decided the contrary, they were wrong.

[Reported in *Weekly Notes*, January 24, 1948, p. 36.]

CLAIM FOR POSSESSION OF DEBENTURES IN LONDON. APPLICATION OF CZECHOSLOVAK FOREIGN EXCHANGE LAW

Frankmann v. *Anglo-Prague Credit Bank* (*London Office*)
(King's Bench Division. February 2, 1948)

The Facts.

The action was in detinue, the claim being for possession of three registered debentures of £100 each in the Skoda Armament Works. The debentures formed part of what was described as the 'English issue'. The original issue was made in 1930 and one Richard Weiner became a subscriber through a branch of the Anglo-Prague Credit Bank in Czechoslovakia. The debentures in question were purchased on the London Stock Exchange, were taken out in the names of nominees of the bank, and were deposited with the bank's London branch, where they remained until the present action was brought.

Mrs. Paula Frankmann, a Czechoslovak subject, became entitled under Czechoslovak law to the debentures upon the intestacy of Richard Weiner, her brother. [It was said in evidence that she became so entitled in 1935. The point was, however, not decided and she may in fact not have become entitled until 1938.] In 1938 the Anglo-Prague Credit Bank notified Mrs. Frankmann that the debentures were on deposit with their London branch. Mrs. Frankmann came to London in 1939 and remained there until her

death in 1945. Interest on the debentures was received by Mrs. Frankmann throughout the war from the Czechoslovak Claims Office through the British Treasury.

The plaintiff was Mrs. Frankmann's administrator. An appearance was entered for the Prague Credit Bank (sued as Anglo-Prague Credit Bank, London Office). The defendants admitted the plaintiff's title but maintained they were prohibited from handing over the debentures by the Czechoslovak Foreign Exchange Law No. 92 of 1946. Under the relevant provisions of this law no transfer of any security was permitted from a person having the status of an 'exchange citizen' by that law (*i.e.*, any person, including a foreigner, resident in Czechoslovakia) to an 'exchange foreigner' (*i.e.*, a Czechoslovak national resident outside Czechoslovakia or a foreign person resident in Czechoslovakia less than twelve months at one stretch) without the consent of the National Bank of Czechoslovakia. This same law further provided that a foreign branch of a Czechoslovak corporation, whether it had separate legal personality or not, was to be treated as an 'exchange foreigner'. The defendants alleged that they had sought in vain the consent of the National Bank of Czechoslovakia to the transfer of the debentures, the subject of the present action. The defendants maintained that the court should give effect to that law either because Czechoslovak law was the proper law of the contract or because under the Bretton Woods Agreements the English courts were under an obligation to give effect to the exchange and currency laws of Czechoslovakia. The defendants cited in particular *Kraus* v. *Zivnostenaka*, 64 N.Y. Supplement of American Law Journal, p. 208, where a in some respects similar claim was rejected on both grounds.

The plaintiffs contended that the contract was to be performed in London because the agreed place of deposit was London. They further contended that the Czechoslovak foreign exchange law is not directly concerned with contracts at all but looks to the actual transfer, in other words, they contended that the Czechoslovak exchange law did not affect the primary duty of the depositary to hand back the thing deposited.

The actual transfer sought by the plaintiffs was from one 'exchange foreigner' to another 'exchange foreigner', both of whom were in London, and such a transfer was not prohibited by Czechoslovak law. The expert witness in the case knew of no Czechoslovak law prohibiting the transfer of securities such as these from one exchange foreigner to another outside Czechoslovakia. The primary duty of the defendants remained of handing back the thing deposited, and where possible to do so legally even by their own law.

Reference was made by both plaintiffs and defendants to *Kleinwort, Sons & Co.* v. *Ungarische Baumwolle Industrie Aktiengesellschaft*, [1939] 2 K.B. 678. The plaintiffs referred to *Wetherman* v. *London and Liverpool Bank of Commerce*, 31 T.L.R. p. 20.

Judgment.

Mr. Justice Cassels held Czechoslovak law to be the proper law of the contract and Prague to be the place of performance of the contract. He accepted the statement of the expert witness and agreed that Czechslovak law did not prevent a transfer abroad from one 'exchange foreigner' to another. He further held that the London bank was not a separate legal entity and that the securities were not held in London to the order of Mrs. Frankmann but to the order of the bank in Prague. Mr. Justice Cassels distinguished the present case from *Wetherman* v. *London and Liverpool Bank of Commerce* in as much as there was no third party, the London and Prague banks being one in law. He held that *Kleinwort's Case* did not apply; there the proper law of the contract was held to be English law. The Czechoslovak laws in question were not inapplicable in this country as penal laws being in fact revenue laws, and the effect of the Bretton Woods Agreement Act, 1945, and Order No. 36, S.R.O., 1946, para. 3, and the schedule, Part 1, was to make Czechoslovak laws apply in this country where in fact they are applicable.

Judgment for the defendants.

[Reported in *Weekly Notes*, February 21, 1948, p. 73.]

BOOK REVIEWS

Erik Brüel; International Straits, A Treatise on International Law. Nyt Nordisk Forlag Arnold Busck, Copenhagen. 1947. [Sweet & Maxwell, Ltd. Two vols. 278 and 426 pages. 32s. 6d.]

This work, by a Danish author who has already made some notable contributions to the problems of international law connected with the Danish Straits, was completed in 1939, but publication has been delayed by the war. Indeed, the war has caused Dr. Brüel greater loss than this delay. A visit by the R.A.F. to a Copenhagen target destroyed the translated manuscript reposing in an adjoining printing works, with the result that, while Volume 2 appears in its original excellent translation (the contents of it having already seen the light of day in the *Scandinavian Review of International Law*), no English translator was available for Volume 1. The result is a text which is unfortunately in parts difficult to understand.

Volume 2 is a valuable work of reference, being devoted entirely to an historical and critical study of the régimes established by treaty for the Danish Straits, the Strait of Magellan, Gibraltar and the Turkish Straits. Volume 1 is the more ambitious and, for the non-specialist, more interesting, attempt to arrive at a conclusion not only as to what the law may be said to be regarding international straits, but also what it ought to be. To arrive at this result Dr. Brüel has delved deeply into the literature of his subject and into published and unpublished documents illustrative of the practice and views of States, and has collected his material under the familiar continental pattern of doctrine and practice. This is a valuable task, for which those concerned with international law must be grateful, the more so as no single work has apparently hitherto been devoted to this subject, with the exception of the Report by Rudolf Laun to the Conference of Neutrals held in Stockholm in 1916, and published in 1918 with a Draft Convention appended. (This latter is reprinted as an Appendix to this volume.) Considerable discussion of the subject is to be found in the proceedings of the Institute of International Law and of the fruitless Hague Codification Conference of 1930. Dr. Brüel has drawn on this material, but he does not seem to have considered the interesting three Articles in the Draft Convention on Territorial Waters, (8–10), and the well-documented comments thereon, published in 1929 by the Harvard Law School for the impending Hague Conference. With events in World War II the author has inevitably been unable to deal, but since, as he says, his purpose has been

mainly to point out the various roads which developments of the subject may take, this omission does not seriously detract from the value of his work.

After the rude shocks to which international law has been subjected during and after the late war, some of Dr. Brüel's conclusions will seem a little utopian. As he rightly points out, the tendency in the law and practice relating to straits which connect two portions of the high seas, has been for the territorial supremacy of the littoral State or States to yield increasingly to the demands of the international community. But it is a long way from this position—brought about not so much by a rise in international morality as by readjustments in the balance of sea and land power—to visualise a littoral State in the near future surrendering more and more of its territorial sovereignty and administering straits commanded by its territory as a 'negotiorum gestor' on behalf of the international community.

But not all the treatment is quite so visionary. After pointing out at the end of his survey of the theory and practice of States that 'the legal status of straits is still far from having reached a state of development, still less a state of clarity, which may be said to correspond to the function in the international community of these important waters', the author proceeds to draw certain practical conclusions which are much more closely related to the world of actualities. It is not possible in a short summary to do justice to the interesting fifty pages devoted by him to these 'observations de lege ferenda', but the more important points are noted below.

Dr. Brüel is prepared to accept the view that where straits can be commanded by batteries of the littoral States, the waters of such straits are territorial, irrespective of their width. He is quite content with the fact that modern range guns lead to the result that 'practically all waters covered by the geographical conception of straits will be territorial from coast to coast' since this would, in his view, lead to a uniformity of legal status. But on the other hand, it demands a high standard of international sense of responsibility on the part of the littoral State, and especially where the régime is not regulated by any treaty. Few will quarrel with Dr. Brüel's acceptance of the 'middle line' rule for determining the boundary of jurisdiction between two littoral States. It is confirmed by British practice—in recent years, for example, in the Act of 1928 approving the Agreement between Britain and the Sultan of Johore of October 19, 1927 (18 & 29 Geo. 5, c. 23) relating to the Malayan Strait. Incidentally, Dr. Brüel does not discuss this agreement.

Perhaps the most interesting part of this discussion is the author's advocacy of a right of passage in time of peace as far as possible unrestricted by the jurisdictional rights of the littoral States, and he sees the happiest application of this principle in practice in the Danish Rules of 1938 relating to the Danish Straits.

On the other hand, it is hard to believe that States are likely, in the absence of a more effective organisation of the international community than exists at present, to abandon the principle (expounded on broad lines in *The Bangor Case* by Sir Samuel Evans) that the right of free passage is not inconsistent with the full territorial sovereignty of littoral States. As late as 1933, for example, this principle was reaffirmed by the United States—Panama Claims Commission in *The David*. However, Dr. Brüel, in his proposals to limit the jurisdictional rights of the territorial sovereign to a minimum, has interesting things to say about such matters as the validity of municipal law in the straits (what is the nationality of a child born on a vessel passing through international straits?) the right to collect dues for services, and as to the authority of the littoral State to legislate for straits.

The value of this book as a work of reference is considerably reduced by the absence of an index.

L. B. Schapiro.

The Progressive Development of International Law. By H. W. Briggs. [Istanbul: Turkish Institute of International Law. 1947. 46 pp.]

This pamphlet is a reprint of a course of lectures delivered by Professor Briggs at Istanbul University in 1946–7. The learned lecturer referred to article 13 of the Charter of the United Nations on the progressive development and codification of international law, and dealt with it other than in the normal theoretical way. Under the general heading of *The Progessive Development of International Law* he lectured on a number of topical problems, namely: the role of international law, international legislation, human rights, world government and the control of atomic energy.

Of these subjects, perhaps the two most important concern world government and human rights. Like Professor H. A. Smith in his *Crisis in the Law of Nations*, Professor Briggs is opposed to a world State which, after all, unless it is based on conquest, rests on a treaty basis, in which case it is as strong or as weak as any other treaty, and depends for its maintenance on the goodwill of its parties. Further, he contends that in the light of present-day realities such a world State is completely impracticable. International government by way of international organisations acting through international conventions based on common interest he believes to be possible and practical.

As to human rights, Professor Briggs soon disposes of the current philosophical discussion on the position of the individual in international law, drawing attention to what is the only important consideration. 'The question whether the individual is a subject or

merely a beneficiary of international law is completely unimportant as long as the individual actually receives the benefits stipulated in his behalf by international law' (p. 30). For this reason he rejects, as completely unrealistic, schemes to give the individual the right to sue his own State before an international tribunal. When talking of human rights, he refers to the Sino-American Treaty of 1946, which stipulated for equal treatment 'in conformity with the applicable laws and regulations' (p. 28). The learned lecturer contends that such treaties are generally observed, and tend to grant to the alien those rights already enjoyed by nationals under their constitution. Perhaps one is permitted to draw the attention of Professor Briggs to the manner in which the Supreme Court of the United States has interpreted the Constitution and its Amendments, so that the rights enjoyed by aliens under such treaties are far from being the same as those enjoyed by nationals. The situation is such that a colleague of Professor Briggs at Cornell University, Professor Konvitz, has said in his recently published *Alien and Asiatic in American Law*, that United States legislation deprives aliens of fundamental human rights (pp. 168–9).

Perhaps the lesson to be learnt from Professor Briggs's lectures on *The Progressive Development of International Law* is that 'the conception of international law as a series of prohibitions set against the power politics of States must be replaced by a conception which regards international law as the exemplification of the functional rules of order necessary for the attainment of specific ends. . . . These ends are set forth in the Charter' (p. 16). It must not be forgotten, however, that even the references in the Charter to human rights probably fall within the closed field of domestic jurisdiction, unless the attack upon them is so large and so horrible that international peace and order are menaced (p. 31).

L. C. Green.

Carnegie Endowment for International Peace: Division of International Law: Diplomatic Correspondence of the United States: Canadian Relations. 4 vols. [Vol. 1 (1940) xlvii and 947 pp.: 1784–1820. Vol. 2 (1942) xxxviii and 1116 pp.: 1821–1835. Vol. 3 (1943) xliv and 1189 pp.: 1836–1848. Vol. 4 (1946) xliv and 891 pp.: 1849–1860.]

The total number of documents in this series is 2,460, which is now complete with the publication of the fourth volume, which Dr. William R. Manning fortunately had time to finish before his death in October, 1942.

The arrangement adopted in these volumes is strictly chronological, each volume being divided into two parts: communications to Great Britain, and communications from Great Britain. Each volume is separately indexed, and the index is a full one, but for the

purpose of reference on any particular topic, it is usually necessary to turn to several volumes and to trace by means of the index in each of them the development of the subject under investigation. There are few cross-references in the documents themselves, which would have been useful.

As regards the principles of editing, Dr. Manning says in his preface to Volume 1 that it has been his purpose to 'err on the side of inclusion rather than exclusion. No documents, or portions thereof, have been excluded because they contain confidential or indiscreet statements; and none have been included or excluded because they favoured or opposed the one side or the other of any controversial issue'. Purely formal documents containing no important information have naturally been omitted. But in many instances considerations of space have forced Dr. Manning to exercise more drastic powers of selection from the vast mass of material which he has sifted. To take one example: in the case of documents relating to Louisiana, both before and after its cession to the United States, only those documents have been included which 'clearly had a Canadian bearing'. In other cases, however, the demarcation line has not always been so easy to trace.

The following are the main subjects of general interest covered by the documents in the four periods into which the collection is divided:

1784–1820: Many of the documents in this period are concerned with the negotiation and signature of the Jay Treaty in 1794 and the subsequent interpretation of it, as well as with the negotiation and interpretation of the Treaty of Ghent, which followed the war between Britain and U.S.A. of 1812.

1821–1835: A good deal of the correspondence in this period is concerned with boundary disputes, and in particular, with the disputed north-eastern boundary. The perennial subjects of dispute also claim attention: the North Atlantic Coast Fisheries and the navigation of the St. Lawrence River.

1836–1848: Boundaries, particularly the north-eastern boundary, occupy much space in the correspondence of this period, but the correspondence in connection with the capture and destruction of *The Caroline* is of particular interest.

1849–1860: Documents in this period deal with the affairs of the Hudson's Bay Company, the negotiation of the Reciprocity Treaty regarding fisheries, duties and navigation signed at Washington in 1854, and correspondence relating to extradition.

Among the documents directly concerned with prize law, the most important are: (1) the correspondence relating to the capture by Britain of the United States vessel *The Pomona* in 1795, which gave rise to a United States protest regarding seizure by Britain of diplomatic mails (Vol. 1, docs. 81, 83, 366, 369); (2) the correspondence relating to the United States protest over the condemnation as prize of Revenue Bonds seized in 1814 at the capture of

Moose Island (Vol. 1, docs. 584, 593, 594); and (3) an interesting despatch of August 19, 1793 (Vol. 1, doc. 332) from the British Minister to the United States Secretary of State justifying the jurisdiction in prize of the British Court of Admiralty.

The Caroline incident is covered by the numerous documents dealing with her destruction and the subsequent indictment of McLeod (Vol. 3) which give a much fuller picture of this incident than has hitherto been available—*e.g.*, the suggested mediation of Russia (doc. 1584), or the possibility of outbreak of war which the incident entailed (docs. 1543, 1544).

Several cases of extradition are also discussed in the correspondence which raise interesting questions. The views of the United States Secretary of State on the extradition of political offenders will be found in a long despatch of June 19, 1826, on the proposed terms of the Treaty of Washington (Vol. 2, doc. 693 at p. 100). Among the cases of extradition covered in the correspondence contained in Vol. 4, the case of Tyler is perhaps the most interesting, especially the opinion of the United States Attorney-General on the question (doc. 2020, note), as well as the British views on the subject (*e.g.*, docs. 2031, 2390, 2396, 2042, 2423).

In the result, the monumental collection in twenty large volumes, in which the Carnegie Endowment for International Peace has made available, in the past twenty years, the diplomatic correspondence of the United States within the Western Hemisphere, all under the editorship of Dr. Manning, has now been completed for the use of the international lawyer and historian.

C. John Colombos.

Year Book of the International Court of Justice. [Printed by A. W. Sijthoff's Publishing Co., Leyden. 240 pp. U.S.$2.20. Agents for sale in Great Britain : H.M. Stationery Office.]

'On March 13, 1947, the International Court of Justice instructed its Registrar to publish a year book providing information concerning its organisation, jurisdiction and activities. This publication, which is intended for general information, will be issued each year in the first half of August. It will cover the period from July 15 of one year to July 15 of the next year. The present volume, however —the first of the series of year books—contains all information concerning the Court from its constitution to July 15, 1947. It is to be understood that the *Year Book of the International Court of Justice* is prepared and published by the Registrar and in no way involves the responsibility of the Court'.

Thus reads the Preface to this handy volume of reference. The following list of chapter headings indicates the lay-out. After an Introductory Chapter giving a Historical Outline of the Constitution of the Court there follow chapters on 'The Court and Registry',

'The Statute and Rules of Court', 'The Court's Jurisdiction', 'Meetings and Decisions of the Court', 'Case Pending Before the Court' (the incidents in the Corfu Channel), 'Decisions Taken by the Court in Application of the Statute and Rules', 'The Court's Publications', 'The Court's Finances', 'Bibliography of the International Court of Justice', 'Texts Governing the Jurisdiction of the Court'.

Anyone directly concerned with the organisation or functioning of the International Court is likely to have need at some time or another to refer to this year book. The excellent arrangement and the completeness of the book together make it certain that the desired information will be found here if it is available at all.

J.

A Manual of International Law. By G. SCHWARZENBERGER. [London: Stevens & Sons, Ltd. 25s.]

A VERY useful publication for all interested in international law and affairs appears in *A Manual of International Law* by Georg Schwarzenberger. A prominent feature of the earlier chapters of the book is the trace of the historical development of this branch of law, and the ultimate establishment of the Permanent Court of International Justice. In these earlier chapters the difference between international law and municipal law as determined by international tribunals is clearly defined; this clear distinction is very helpful to the student who possesses no prior knowledge of the subject.

Diplomats and others connected with international affairs will be grateful for the attention given to subjects such as Diplomatic Immunity and its extension to Consular Officers, the Act of Barter of 1885, the Brussels Convention of 1926, the legal position of British Protected Persons, and, more particularly, the procedure and details relating to the conclusion of International Treaties.

It is evident that this book has been published in opportune time, as the later part of the work deals with a matter which must be of direct concern to our national leaders, in addition to its being of supreme importance to every human being; *viz.*, the problem of our most powerful weapon and perhaps most dangerous enemy—the atom.

The question of the pressure now being exercised both externally and internally in certain foreign small States to conclude treaties with a more powerful neighbour is very well treated in this book. It enables the reader to appreciate fully the various tactics employed, and about which we read so much in the press.

The international law student who requires to pursue further explorations in the field of international law will find the classified bibliography at the end of the volume a thorough guide through the mass of publications on the subject.

As a final note, I would say that this book is, in a sense, unique, as it caters for the ignoramus, the student, as well as the expert practitioner of international law.

J. N. Kemp.

United Europe. A Short History of the Idea. By Sidney D. Bailey. [National News-Letter. vi and 42 pp. Price 1s. 6d.]

In order to prove that federation is by no means a modern idea, Mr. Bailey traces its development through the Leagues of the Greek States; the Grand Design of Sully, and the dreams of European union conceived by Penn and Bellers, the English Quakers; Saint-Pierre, the versatile French Churchman; Rousseau, the brilliant and cynical writer; Jeremy Bentham, the eminent English jurist and reformer, and Kant, one of the greatest of modern philosophers. Though none of these schemes has had any great practical effect, they nevertheless served to pave the way for more concerted action in future.

In 1926, the first Congress of the Pan-European Union, founded by Count Coudenhove-Kalergi, was held in Vienna. Three years later, the plan of M. Aristide Briand for a United States of Europe was discussed by the Assembly of the League of Nations. Each of the twenty-six European Governments accepted in principle the idea of closer collaboration, but the plan was shelved when the crisis in world events necessarily turned the minds of statesmen to more pressing problems.

Having considered the historical development of the idea of European union, Mr. Bailey turns to the work being done at present by the British non-party organisation called ' Federal Union ', and he outlines the aims of the European Union of Federalists as they were defined at the meeting of that body in Amsterdam in April, 1947. He also quotes from speeches made in the House of Commons showing the support given to the scheme by the present Government.

Mr. Bailey's concise treatment of his subject enables him to present a clear historical picture of the development of the ideal of European union. He fully realises, of course, the difficulties still to be overcome, but his monograph proves that ' the conception of United Europe is centuries old ', and that, far from being a vague theory, it is a vigorous idea in the minds of many Europeans today.

M. E. B.

' *Les Crimes de Guerre.* Commis lors de la liberation du territoire national, Septembre, 1944, Région des Flandres '. [Liège, Georges Thone, Editeur. 1947. 33 pp.]

This booklet has been issued by the Belgian War Crimes Commission set up in 1944 by the Belgian Ministry of Justice for the

purpose of inquiring into all the crimes committed by enemy nationals on Belgian soil after the liberation of Belgium in September, 1944.

It is stated in the Foreword that this report is intended to keep the public advised of the activities of the Commission up to date and, although the investigations are by no means complete, it is already apparent that the war crimes under consideration can be divided into two classes: (1) Crimes against the *community*, as, for example, mass killings as reprisals, and torture camps; (2) violations of the rights of *individuals* as shown by the seizing of hostages, the murder of men, women and children, and the destruction of property without any real excuse. The booklet deals with this second class of crimes.

It is the object of the Commission to inquire into all alleged crimes and, after the verification of the details by credible witnesses, to prepare complete files of the evidence and exhibits in each case in order that the perpetrators of the crimes may in due course be brought to justice before Belgian Courts, or before other tribunals set up for the purpose of trying war criminals. With this object in view, the Commission has made exhaustive inquiries regarding seven incidents which took place in the Flanders area between September 3 and 9, 1944. In each case Belgian nationals were coldly and deliberately murdered by the German military authorities without any semblance of a trial and in defiance of the rules of war which civilised nations have pledged themselves to observe.

The facts are related in a judicially impersonal manner which is most impressive, and the calm indictment of the German nationals who committed these crimes carries all the power of studied impartiality. No attempt is made to gain sympathy by the use of dramatic journalese, and the reader feels that this is a true, unexaggerated account of what actually happened.

C. J. C.

SELECTED OFFICIAL DOCUMENTS

THE following documents are printed in the present issue:

1. Convention on the Privileges and Immunities of the Specialised Agencies, November, 1947.
2. Declaration on the part of the United States of America Recognising the Compulsory Jurisdiction of the International Court of Justice, August, 1946.
3. Declaration on the part of the Republic of the Philippines Recognising the Compulsory Jurisdiction of the International Court of Justice, July, 1947.
4. Sino-Philippine Treaty of Amity, April, 1947.
5. Communication to the Government of Austria regarding the Termination of the State of War between Austria and the United Kingdom, September, 1947.
6. Declaration by the President of the Republic of Chile regarding Chilean Territorial Claims, June, 1947.
7. Peruvian Decree regarding National Sovereignty and Jurisdiction over the Continental and Insular Shelf, August, 1947.
8. The Draft International Declaration and the Draft International Covenant on Human Rights of the United Nations Commission on Human Rights.
9. Treaty between Belgium, France, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland, March, 1948.

On February 13, 1946, the General Assembly of the United Nations adopted a resolution contemplating the unification as far as possible of the privileges and immunities of the United Nations and of the Specialised Agencies. By a resolution adopted on November 21, 1947, the General Assembly approved a Convention on the Privileges and Immunities of the Specialised Agencies. The Convention, printed in full in the present issue, contains a number of standard clauses which, in general, are applicable to all Specialised Agencies. These, however, are subject to the special provisions set forth in the several Annexes to the Convention which apply separately to each of the existing Agencies. The United Nations Assembly has recommended a procedure to bring within the ambit of the Convention the privileges and immunities of Specialised Agencies which may be established in the future.

The declaration by President Truman on behalf of the United States, recognising the compulsory jurisdiction of the International Court of Justice is a carefully drafted document which makes significant reservations. It may be worth nothing that it was deposited with the Secretary-General of the United Nations under cover of a letter dated August 26, 1946, in which the Acting Secretary of State expressed his faith in international law as a guide and basis in international relations and in the value of referring to a responsible international tribunal all disputes properly justiciable by such a tribunal. The declaration made by the Government of the Philippines on July 12, 1947, does not contain reservations similar to those made by the United States.

The independence of the Republic of the Philippines on July 1, 1946, has been followed by a series of negotiations in which the new Republic has sought to establish her place among the family of nations. The Sino-Philippine Treaty of Amity is an example of one of the resulting treaties. A shadow of the former association between the United States and the Philippines may be seen in Article 9.

As long ago as November, 1943, the Moscow Declaration had proclaimed the intention that Austria should be re-established as a free and independent State. Delay in the conclusion of a Treaty for that purpose led to a unilateral notification issued by the Privy Council Office terminating the state of war between the United Kingdom and Austria on September 16, 1947. On the same date, the United Kingdom Political Representative in Vienna delivered a communication to the Austrian Government, which appears as document No. 5, and which contains the conditions on which the termination was made.

The Chilean and Peruvian Declarations relate to the problem of jurisdiction over the Continental Shelf, but it will be noted that their claims to territory and sovereignty over the high seas go a good deal beyond the proclamations with respect to the Continental Shelf and Coastal Fisheries made by President Truman on September 28, 1945.[1]

The second session of the United Nations Commission on Human Rights opened at Geneva on December 2, 1947, under the chairmanship of Mrs. Franklin D. Roosevelt. It held twenty-three Plenary Meetings and terminated its work on December 17, 1947, by the adoption of a Draft International Declaration on Human Rights and a Draft International Convention on Human Rights.

[1] *American Journal of International Law*, January, 1946, pp. 45 and 46.

1

CO-ORDINATION OF THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND OF THE SPECIALISED AGENCIES.

REPORT OF THE SIXTH COMMITTEE

Rapporteur : Mr. George Kaeckenbeek (Belgium)

APPENDIX A

Resolution I

The General Assembly approves the following Convention on the Privileges and Immunities of the Specialised Agencies and proposes it for acceptance by the Specialised Agencies and for accession by all Members of the United Nations and by any other State Member of a Specialised Agency.

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALISED AGENCIES

Whereas the General Assembly of the United Nations adopted on February 13, 1946, a resolution contemplating the unification as far as possible of the privileges and immunities enjoyed by the United Nations and by the various Specialised Agencies; and

Whereas consultations concerning the implementation of the aforesaid resolution have taken place between the United Nations and the Specialised Agencies;

Consequently, by a resolution adopted on November 21, 1947, the General Assembly has approved the following Convention, which is submitted to the Specialised Agencies for acceptance and to every member of the United Nations and to every other State Member of one or more of the Specialised Agencies for accession.

Article 1

Definitions and Scope

Section 1.

In this Convention :

(i) The words ' standard clauses ' refer to the provisions of Articles 2 to 9.

(ii) The words ' Specialised Agencies ' mean :

(a) The International Labour Organisation;

(b) The Food and Agriculture Organisation of the United Nations;

(c) The United Nations Educational, Scientific and Cultural Organisation;

(d) The International Civil Aviation Organisation;

(e) The International Monetary Fund;
(f) The International Bank for Reconstruction and Development;
(g) The World Health Organisation;
(h) The Universal Postal Union;
(i) The International Telecommunications Union; and
(j) any other Agency in relationship with the United Nations in accordance with Articles 57 and 63 of the Charter.

(iii) The word ' convention ' means, in relation to any particular specialised agency, the standard clauses as modified by the final (or revised) text of the annex transmitted by that Agency in accordance with Sections 36 and 38.

(iv) For the purposes of Article 3, the words ' property and assets ' shall also include property and funds administered by a specialised agency in furtherance of its constitutional functions.

(v) For the purposes of Articles 5 and 7, the expression ' representatives of members ' shall be deemed to include all delegates, alternates, advisers, technical experts and secretaries of delegations.

(vi) In Sections 13, 14, 15 and 25, the expression ' meetings convened by a Specialised Agency ' means meetings of (1) its Assembly and of its executive body (however designated), and (2) of any commission provided for in its constitution, (3) of any international conference convened by it, and (4) of any committees of any of these bodies.

(vii) The term ' Executive head ' means the principal executive official of the specialised agency in question, whether designated ' Director-General ' or otherwise.

Section 2.

Each State party to this Convention in respect of any specialised agency, to which this Convention has become applicable in accordance with Section 37 shall accord to, or in connection with, that agency the privileges and immunities set forth in the standard clauses on the conditions specified therein, subject to any modification of those clauses contained in the provisions of the final (or revised) annex relating to that agency and transmitted in accordance with Sections 36 and 38.

ARTICLE 2

Juridical Personality

Section 3.

The specialised agencies shall possess juridical personality. They shall have the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property, (c) to institute legal proceedings.

Article 3

Property, Funds and Assets

Section 4.

The specialised agencies, their property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 5.

The premises of the specialised agencies shall be inviolable. The property and assets of the specialised agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 6.

The archives of the specialised agencies, and in general all documents belonging to them or held by them, shall be inviolable wherever located.

Section 7.

Without being restricted by financial controls, regulations or moratoria of any kind :

(a) the specialised agencies may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) the specialised agencies shall be free to transfer their funds, gold or currency from one country to another or within any country and to convert any currency held by them into any other currency.

Section 8.

Each specialised agency shall, in exercising its rights under Section 7 above, pay due regard to any representations made by the Government of any State party to this Convention insofar as it is considered that effect can be given to such representations without detriment to interests of the agency.

Section 9.

The specialised agencies, their assets, income and other property shall be :

(a) exempt from all direct taxes; it is understood, however, that the specialised agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialised agencies for their official

use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of their publications.

Section 10.

While the specialised agencies will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the specialised agencies are making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, States parties to this convention will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE 4

Facilities in Respect of Communications

Section 11.

Each specialised agency shall enjoy, in the territory of each State party to this convention in respect of that agency, for its official communications treatment not less favourable than that accorded by the Government of such State to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio.

Section 12

No censorship shall be applied to the official correspondence and other official communications of the specialised agencies.

The specialised agencies shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialised agency.

ARTICLE 5

The Representatives of Members

Section 13.

Representatives of Members at meetings convened by a specialised agency shall, while exercising their functions and during

their journeys to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
(b) inviolability for all papers and documents;
(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
(d) exemption in respect of themselves, and their spouses from immigration restrictions, aliens' registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;
(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
(f) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

Section 14.

In order to secure for the representatives of Members of the specialised agencies at meetings convened by them complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Section 15.

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members of the specialised agencies at meetings convened by them are present in a State for the discharge of their duties shall not be considered as periods of residence.

Section 16

Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the specialised agencies. Consequently, a Member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the Member, the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 17.

The provisions of sections 13, 14 and 15 are not applicable in

relation to the authorities of a State of which the person is a national or of which he is or has been a representative.

ARTICLE 6

Officials

Section 18.

Each specialised agency will specify the categories of officials to which the provisions of this Article and of Article 8 shall apply. It shall communicate them to the Governments of all States parties to this Convention in respect of that agency and to the Secretary-General of the United Nations. The names of the officials included in these categories shall from time to time be made known to the above-mentioned Governments.

Section 19.

Officials of the specialised agencies shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialised agency and on the same conditions as are enjoyed by officials of the United Nations;

(c) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(d) be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;

(e) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;

(f) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 20.

The officials of the specialised agencies shall be exempt from national service obligations, provided that, in relation to the States of which they are nationals, such exemption shall be confined to officials of the specialised agencies whose names have, by reason of their duties, been placed upon a list compiled by the Executive head of the specialised agency and approved by the State concerned.

Should other officials of specialised agencies be called up for national service, the State concerned shall, at the request of the specialised agency concerned, grant such temporary deferments in

the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

Section 21.

In addition to the immunities and privileges specified in sections 19 and 20, the executive head of each specialised agency including any official acting on his behalf during his absence from duty shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 22.

Privileges and immunities are granted to officials in the interests of the specialised agencies only and not for the personal benefit of the individuals themselves. Each specialised agency shall have the right and the duty to waive the immunity of any official in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the specialised agency.

Section 23.

Each specialised agency shall co-operate at all times with the appropriate authorities of members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connection with the privileges, immunities and facilities mentioned in this Article.

Article 7

Abuses of Privilege

Section 24.

If any State party to this Convention considers that there has been an abuse of a privilege or immunity conferred by this Convention, consultations shall be held between that State and the specialised agency concerned to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State and the specialised agency concerned, the question whether an abuse of a privilege or immunity has occurred shall be submitted to the International Court of Justice in accordance with section 32. If the International Court of Justice find that such an abuse has occurred, the State party to this Convention affected by such abuse shall have the right after notification to the specialised agency in question to withhold from, or in connection with, the specialised agency concerned the benefits of the privilege or immunity so abused.

Section 25.

1. Representatives of Members at meetings convened by specialised agencies, while exercising their functions and during

their journeys to and from the place of meeting, and officials within the meaning of section 18 shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of the abuse of privileges of residence by any such person committed by activities in that country outside his official functions, he may be required to leave by the Government of that country provided that;

2. (1) A representative of a Member or a person who is entitled to diplomatic immunity under section 21 shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to that country.

(2) In the case of an official to whom section 21 is not applicable no order to leave the country shall be issued other than with the approval of the Foreign Minister of the country in question and such approval shall only be given after consultation with the executive head of the specialised agency concerned; and if expulsion proceedings are taken against an official, the executive head of the agency shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

Article 8

Laissez-Passer

Section 26.

Officials of the specialised agencies shall be entitled to use the United Nations laissez-passer in conformity with administrative arrangements to be concluded between the Secretary-General of the United Nations and the competent authorities of the specialised agencies to which agencies special powers to issue laissez-passer may be delegated. The Secretary-General of the United Nations shall notify each State party to this Convention of each administrative arrangement so concluded.

Section 27.

States parties to this Convention shall recognise and accept the United Nations laissez-passer issued to officials of the specialised agencies as valid travel documents.

Section 28.

Applications for visas, where required, from officials of specialised agencies holding United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of a specialised agency, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 29.

Similar facilities to those specified in section 28 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of a specialised agency.

Section 30.

The Executive heads, Assistant Executive heads, heads of departments and other officials of a rank not lower than head of department of the specialised agencies travelling on United Nations laissez-passer on the business of the specialised agencies shall be granted the same facilities for travel as are accorded to officials of comparable rank in diplomatic missions.

Article 9

Settlement of Disputes

Section 31.

Each specialised agency shall make provision for appropriate modes of settlement of:

(a) disputes arising out of contracts or other disputes of private character to which the specialised agency is a party;

(b) disputes involving any official of a specialised agency who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of section 22.

Section 32.

All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between one of the specialised agencies on the one hand, and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court and the relevant provisions of the agreements concluded between the United Nations and the specialised agency concerned. The opinion given by the Court shall be accepted as decisive by the parties.

Article 10

Annexes and Application to Individual Specialised Agencies

Section 33.

In their application to each specialised agency, the standard clauses shall operate subject to any modifications set forth in the final (or revised) text of the annex relating to that agency, as provided in sections 36 and 38.

Section 34.

The provisions of the Convention in relation to any specialised agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instruments.

Section 35.

Draft annexes 1 to 9 are recommended to the specialised agencies named therein. In the case of any specialised agency not mentioned by name in section 1, the Secretary-General of the United Nations shall transmit to the agency a draft annex recommended by the Economic and Social Council.

Section 36.

The final text of each annex shall be that approved by the specialised agency in question in accordance with its constitutional procedure. A copy of the annex as approved by each specialised agency shall be transmitted by the agency in question to the Secretary-General of the United Nations and shall thereupon replace the draft referred to in section 35.

Section 37.

The present Convention becomes applicable to each specialised agency when it has transmitted to the Secretary-General of the United Nations the final text of the relevant annex and has informed him that it accepts the standard clauses, as modified by this annex and undertakes to give effect to sections 8, 18, 22, 23, 24, 31, 32, 42 and 45 (subject to any modification of section 32 which may be made in the final text of the annex; to the extent necessary to accord with the constitutional instrument of the agency) and any provisions of the annex placing obligations on the agency. The Secretary-General shall communicate to all Members of the United Nations and other States members of the specialised agencies certified copies of all annexes transmitted to him under this section and of revised annexes transmitted under section 38.

Section 38.

If, after the transmission of a final annex under section 36, any specialised agency approves any amendments thereto in accordance with its constitutional procedure, a revised annex shall be transmitted by it to the Secretary-General of the United Nations.

Section 39.

1. The provisions of this Convention shall in no way limit or prejudice the privileges and immunities which have been or may hereafter be accorded by any State to any specialised agency by reason of the location in the territory of that State of its headquarters or regional offices.

2. This Convention shall not be deemed to prevent the conclusion between any State party thereto and any specialised agency

of supplemental agreements adjusting the provisions of this Convention or extending or curtailing the privileges and immunities thereby granted.

Section 40.

It is understood that the standard clauses as modified by the final text of an annex sent by a specialised agency to the Secretary-General of the United Nations under section 36 (or any revised annex sent under section 38) will be consistent with the provisions of the constitutional instrument then in force of the agency in question, and that if any amendment to that instrument is necessary for the purpose of making the constitutional instrument so consistent, such amendment will have been brought into force in accordance with the constitutional procedure of that agency before the final (or revised) annex is transmitted.

The Convention shall not itself operate so as to abrogate, or derogate from, any provisions of the constitutional instrument of any specialised agency or any rights or obligations which the agency may otherwise have or acquire.

Article 11

Final Provisions

Section 41.

Accession to this Convention by a Member of the United Nations and (subject to section 42) by any State member of a specialised agency shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations, which shall take effect on the date of its deposit.

Section 42.

Each specialised agency shall communicate the text of this Convention together with the relevant annexes to those of its members which are not Members of the United Nations and shall invite them to accede thereto in respect of that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-General of the United Nations or with the Executive head of the specialised agency.

Section 43.

Each State party to this Convention shall indicate in its instrument of accession the specialised agency or agencies in respect of which it undertakes to apply the provisions of this Convention. Each State party to this Convention may by a subsequent written notification to the Secretary-General of the United Nations undertake to apply the provisions of this Convention to one or more further specialised agencies. This notification shall take effect on the date of its receipt by the Secretary-General.

Section 44.

This Convention shall enter into force for each State party to this Convention in respect of a specialised agency when it has become applicable to that agency in accordance with Section 37 and the State party has undertaken to apply the provisions of the Convention to that agency in accordance with section 43.

Section 45.

The Secretary-General of the United Nations shall inform all Members of the United Nations, as well as all members of the specialised agencies, and Executive heads of the specialised agencies of the deposit of each instrument of accession received under section 41 and of subsequent notifications received under section 43. The Executive head of a specialised agency shall inform the Secretary-General of the United Nations and the members of the agency concerned of the deposit of any instrument of accession deposited with him under section 42.

Section 46.

It is understood that, when an instrument of accession or a subsequent notification is deposited on behalf of any State, this State will be in a position under its own law to give effect to the terms of this Convention, as modified by the final texts of any annexes relating to the agencies covered by such accessions or notifications.

Section 47.

1. Subject to the provisions of paragraphs (2) and (3) of this Section, each State party to this Convention undertakes to apply this Convention in respect of each specialised agency covered by its accession or subsequent notification, until such time as a revised Convention or annex shall have become applicable to that agency and the said State shall have accepted the revised Convention or annex. In the case of a revised annex the acceptance of States shall be by a notification addressed to the Secretary-General of the United Nations which shall take effect on the date of its receipt by the Secretary-General.

2. Each State party to this Convention, however, which is not or has ceased to be a member of a specialised agency, may address a written notification to the Secretary-General of the United Nations and the Executive head of the agency concerned to the effect that it intends to withhold from that agency the benefits of this Convention as from a specified date which shall not be earlier than three months from the date of receipt of the notification.

3. Each State party to this Convention may withhold the benefit of this Convention to any specialised agency which ceases to be in relationship with the United Nations.

4. The Secretary-General of the United Nations shall inform all

States parties to this Convention of any notification transmitted to him under the provisions of this section.

Section 48.

At the request of one-third of the States parties to this Convention, the Secretary-General of the United Nations will convene a conference with the view of its revision.

Section 49.

The Secretary-General of the United Nations shall transmit copies of this Convention to each specialised agency and to the Government of each Member of the United Nations.

ANNEXES OF THE PROPOSED CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALISED AGENCIES.

Annex 1

The International Labour Organisation

In their application to the International Labour Organisation the standard clauses shall operate subject to the following provision:

Article 5 (other than paragraph (c) of section 13) and section 25, paragraphs 1 and 2 (1) of Article 7 shall extend to the employers and workers members of the Governing Body of the International Labour Office; their alternates and advisers; except that any waiver of the immunity of any such person member under section 16 shall be by the Governing Body.

Annex 2

The Food and Agriculture Organisation of the United Nations

In their application to the Food and Agriculture Organisation of the United Nations (hereinafter called 'the Organisation') the standard clauses shall operate subject to the following provisions:

1. Article 5 and Section 25, paragraphs 1 and 2 (1) of Article 7 shall extend to the Chairman of the Council of the Organisation, except that any waiver of the immunity of the Chairman under Section 16 shall be by the Council of the Organisation.
2. (i) Experts (other than officials coming within the scope of Article 6) serving on committees of, or performing missions for, the Organisation shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) immunity from personal arrest or seizure of their personal baggage;

(b) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity of legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for the Organisation;

(c) the same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign governments on temporary official missions;

(ii) Privileges and immunities are granted to the experts in the interests of the Organisation and not for the personal benefit of the individuals themselves. The Organisation shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organisation.

Annex 3

The International Civil Aviation Organisation

In their application to the International Civil Aviation Organisation (hereinafter called 'the Organisation') the standard clauses shall operate subject to the following provisions:

1. The privileges, immunities, exemptions and facilities referred to in Section 21 of the standard clauses shall also be accorded to the President of the Council of the Organisation.

2. (i) Experts (other than officials coming within the scope of Article 6) serving on committees of, or performing missions for, the Organisation shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) immunity from personal arrest or seizure of their personal baggage;

(b) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity of legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no

longer serving on committees of, or employed on missions for the Organisation;

(c) the same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign governments on temporary official missions;

(d) inviolability of their papers and documents relating to the work on which they are engaged for the Organisation.

(ii) In connection with (d) of 2 above, the principle contained in the last sentence of Section 12 of the standard clauses shall be applicable.

(iii) Privileges and immunities are granted to the experts of the Organisation in the interests of the Organisation and not for the personal benefit of the individuals themselves. The Organisation shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organisation.

Annex 4

The United Nations Educational, Scientific and Cultural Organisation

In their application to the United Nations Educational, Scientific and Cultural Organisation (hereinafter called 'the Organisation') the standard clauses shall operate subject to the following provisions:

1. Article 5 and Section 25, paragraphs 1 and 2 (1) of Article 7 shall extend to the President of the Conference and members of the Executive Board of the Organisation, their substitutes and advisers except that any waiver of the immunity of any such person of the Executive Board under Section 16 shall be by the Executive Board.

2. (i) Experts (other than officials coming within the scope of Article 6) serving on committees of, or performing missions for, the Organisation shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) immunity from personal arrest or seizure of their personal baggage;

(b) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity of legal process of every

kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for the Organisation;

(c) the same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign governments on temporary official missions;

(ii) Privileges and immunities are granted to the experts of the Organisation in the interests of the Organisation and not for the personal benefit of the individuals themselves. The Organisation shall have the right and duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organisation.

ANNEX 5

The International Monetary Fund

In their application to the International Monetary Fund (hereinafter called 'the Fund'), the standard clauses shall operate subject to the following provisions:

1. The following shall be substituted for Section 9:

(a) The Fund, its assets, property, income and its operations and transactions authorised by its Articles of Agreement, shall be immune from all taxation and from all customs duties. The Fund shall be immune from prohibitions and restrictions on imports and exports in respect of articles imported or exported for its official use and in respect of its publications. It is understood, however, that the Fund will not claim exemption from taxes which are, in fact, no more than charges for public utility services, and that articles (other than its publications) imported under this exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country. The Fund shall also be immune from the collection or payment of any tax or duty.

(b) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held:

(i) which discriminates against such obligation or security solely because of its origin; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

2. Section 32 of the standard clauses shall only apply to differences arising out of the interpretation or application of privileges and immunities which are derived by the Fund from this Convention and are not included in those which it can claim under its Articles or otherwise.

Annex 6

The International Bank for Reconstruction and Development

In their application to the International Bank for Reconstruction and Development (hereinafter called 'the Bank'), the standard clauses shall operate subject to the following provisions:

1. The following shall be substituted for Section 4:

'Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.'

2. The following shall be substituted for Section 9:

(a) The Bank, its assets, property, income and its operations and transactions authorised by its Articles of Agreement, shall be immune from all taxation and from all Customs duties. The Bank shall be immune from prohibitions and restrictions on imports and exports in respect of articles imported or exported for its official use and in respect of its publications. It is understood, however, that the Bank will not claim exemption from taxes which are, in fact, no more than charges for public utility services, and that articles (other than its publications) imported under this exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.

The Bank shall also be immune from the collection or payment of any tax or duty.

(b) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held:

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(c) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held :

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

3. Section 32 of the standard clauses shall only apply to differences arising out of the interpretation or application of privileges and immunities which are derived by the Bank from this Convention and are not included in those which it can claim under its Articles or otherwise.

ANNEX 7

The World Health Organisation

In their application to the World Health Organisation (hereinafter called ' the Organisation ') the standard clauses shall operate subject to the following modifications:

1. Article 5 and Section 25, paragraphs 1 and 2 (1) of Article 7 shall extend to persons designated to serve on the Executive Board of the Organisation, their alternates and advisers, except that any waiver of the immunity of any such persons under Section 16 shall be by the Board.

2. (i) Experts (other than officials coming within the scope of Article 6) serving on committees of, or performing missions for, the Organisation shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) immunity from personal arrest or seizure of their personal baggage;

(b) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity of legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for the Organisation;

(c) the same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign governments on temporary official missions;

(ii) Privileges and immunities are granted to the experts of the Organisation in the interests of the Organisation and not for the personal benefit of the

individuals themselves. The Organisation shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organisation.

Annex 8

The Universal Postal Union

The standard clauses shall apply without modification.

Annex 9

The International Telecommunications Union

The standard clauses shall apply without modification.

APPENDIX B

Resolution II

Whereas the General Assembly on February 13, 1946, adopted a resolution contemplating the unification as far as possible of the privileges and immunities enjoyed by the United Nations and by the Specialised Agencies;

Whereas the General Assembly by a resolution adopted on November 21, 1947, approved a General Convention on the Privileges and Immunities of the Specialised Agencies and submitted it to the Specialised Agencies for acceptance and to every Member of the United Nations and to every other State Member of one or more of the Specialised Agencies for accession; and

Whereas it is therefore desirable that any Specialised Agency which is hereafter brought into relationship with the United Nations in accordance with Article 63 of the Charter should derive its privileges and immunities exclusively from the said General Convention with such modifications as may be necessary to meet the particular requirements of that Agency contained in an Annex,

The General Assembly

Therefore Recommends that the constitutional instrument of any Specialised Agency which may hereafter be established should not contain detailed provisions relating to the privileges and immunities to be accorded to, or in connection with, that specialised agency, but should provide that such privileges and immunities shall be governed by the said General Convention modified as may be required;

Recommends that an international conference at which the establishment of a Specialised Agency is considered should prepare a draft of the Annex relating to the proposed agency contemplated

in section 36 of the said General Convention and that, if the agency is established, it should send such draft Annex to the Secretary-General of the United Nations with a view to assisting the Economic and Social Council in preparing the draft Annex which it will recommend pursuant to section 35 of the said General Convention after the agency has been brought into relationship with the United Nations, in conformity with the Charter and any recommendation of the General Assembly; and

DIRECTS the Secretary-General to transmit a copy of this resolution to the appropriate officer of any conference at which the establishment of a Specialised Agency is to be considered.

APPENDIX C

Resolution III

WHEREAS it has been recognised as necessary that the Specialised Agencies enjoy, at the earliest possible date, the privileges and immunities essential for an efficient exercise of their respective functions;

WHEREAS a considerable delay will necessarily ensue before the convention becomes operative in the case of the various agencies;

THE GENERAL ASSEMBLY

RECOMMENDS

That the States Members of the United Nations, pending their formal accession to the general convention concerning the privileges and immunities of Specialised Agencies, including the Annexes relating to each Agency, should immediately accord as far as possible to, or in connection with, the Specialised Agencies, the benefit of the privileges and immunities provided in the said general convention and its Annexes, it being understood that the Specialised Agencies may take any necessary parallel action in regard to those of their Members, which are not Members of the United Nations.

DECLARATION ON THE PART OF THE UNITED STATES OF AMERICA RECOGNISING THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE.

I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice [1] and in accordance with the Resolution of August 2, 1946, of the Senate of the United States of America (two-thirds of the Senators

[1] [Treaty Series 993, p. 30.]

present concurring therein), that the United States of America recognises as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation;

Provided, that this declaration shall not apply to

a. disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America; or

c. disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

Done at Washington this fourteenth day of August, 1946.

HARRY S. TRUMAN.

DECLARATION ON THE PART OF THE REPUBLIC OF THE PHILIPPINES RECOGNISING THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE.

Whereas, the Government of the Republic of the Philippines, as a signatory to the Charter of the United Nations Organisation, has also subscribed to the Statute of the International Court of Justice;

Whereas, article 36 of the Statute provides as follows:

'1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

'2. The states parties to the present Statute may at any time declare that they recognise as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

'*a*. the interpretation of a treaty;

'*b*. any question of international law;

'*c*. the existence of any fact which, if established, would constitute a breach of an international obligation;

'*d*. the nature or extent of the reparation to be made for the breach of an international obligation.

'3. The declarations referred to above may be made unconditional or on condition of reciprocity on the part of several or certain states, or for a certain time.

'4. Such declaration shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

'5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

'6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court'.

WHEREAS, the President of the Philippines, having seen and considered the aforesaid provision of the International Court of Justice, proposed to make a declaration on behalf of the Republic of the Philippines in accordance therewith;

WHEREAS, the Senate of the Republic of the Philippines by its Resolution No. 33 of May 22, 1947, did concur in the above proposal of the President of the Philippines;

WHEREAS, the President of the Philippines, having secured the concurrence of the Senate of the Philippines in accordance with constitutional procedure, made a declaration that the Republic of the Philippines recognises as compulsory *ipso facto*, and without special agreement in relation to any other state accepting the same obligation, and on condition of reciprocity, the jurisdiction of the International Court of Justice in all disputes mentioned in paragraph 2, Article 36 of the Statute, for a period of ten years from July fourth, nineteen hundred and forty-six, and thereafter to continue until notification of abrogation is made by the Philippine Government;

NOW, THEREFORE, be it known that I, Manuel Roxas, President of the Philippines, do hereby proclaim and make public the declaration of the President of the Philippines to the end that the same and every clause thereof may be observed and fulfilled with good faith by the Republic of the Philippines and the citizens thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, Philippines, this 12th day of July,

in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS,
President of the Philippines.

By the President :

EMILIO ABELLO,
Chief of the Executive Office.

SINO-PHILIPPINE TREATY OF AMITY, APRIL, 1947

The Republic of the Philippines and the Republic of China animated by the desire to strengthen and perpetuate the friendly relations so happily existing between them, have resolved to conclude a Treaty of Amity and to that end have agreed upon the following articles:—

ARTICLE 1

There shall be perpetual peace and everlasting amity between the Republic of the Philippines and the Republic of China and their peoples.

ARTICLE 2

Should any dispute arise between the two high contracting parties which cannot satisfactorily be adjusted by diplomacy, or through mediation or arbitration, the parties shall not use force for settlement, but shall refer the dispute to the International Court of Justice for final adjudication.

ARTICLE 3

Each of the high contracting parties shall have the right to send to, and receive from, the other, diplomatic representatives. Such diplomatic representatives shall enjoy in the territories of the other the rights, privileges, exemptions and immunities accorded under generally recognised principles of international law and usage.

ARTICLE 4

Each of the high contracting parties shall have the right to send to, and receive from, the other, consuls-general, consuls, vice-consuls and consular agents, who, being duly provided with exequatur, shall be permitted to reside in the territories of the other in such places as may be agreed upon by the high contracting parties. Such consular representatives shall exercise their functions and enjoy the privileges and immunities accorded to officers of their status and rank in accordance with the generally accepted principles of international law and usage.

ARTICLE 5

The nationals of each of the high contracting parties shall be at liberty to enter or leave, to travel or reside in the territories of the other upon the same terms as the nationals of any third country in accordance with the laws and regulations of the other.

ARTICLE 6

The nationals of each of the high contracting parties shall be accorded, in the territories of the other, the liberty to establish schools for the education of their children, and shall enjoy freedom of peaceful assembly and association, of publication, of worship and religion, of burial and building cemeteries, upon the same terms as the nationals of any third country in accordance with the laws and regulations of the other.

The nationals of each of the high contracting parties shall have the right to acquire, inherit, possess, lease, occupy and dispose of, by sale, testament, donation or otherwise, any kind of movable or immovable property and to engage in trade and other peaceful and lawful pursuits throughout the whole extent of the territories of the other upon the same terms as the nationals of any third country in accordance with the constitution, laws and regulations of the other.

ARTICLE 7

The nationals of each of the high contracting parties shall be accorded, in the territories of the other, the same treatment with respect to the protection and security of their persons and property as is accorded to the nationals of the other.

The nationals of each of the high contracting parties shall receive in the territories of the other in regard to all legal proceedings and in matters relating to the administration of justice and the levying of taxes treatment no less favourable than that accorded to the nationals of the other.

ARTICLE 8

The high contracting parties agree to conclude as soon as practicable a treaty of commerce and navigation.

ARTICLE 9

The stipulations of this treaty do not extend to advantages which are now accorded or which may hereafter be accorded by the Republic of the Philippines to the United States of America or its nationals.

ARTICLE 10

The high contracting parties shall ratify this treaty in conformity with their respective constitutional procedures, and it shall enter into force on the day on which the exchange of ratifications takes

place. The instruments of ratification shall be exchanged in the city of Manila, Philippines.

In faith whereof, the plenipotentiaries of the high contracting parties have signed this present treaty and have hereunto affixed their seals.

Done in duplicate in the English and Chinese languages, both texts being authoritative, in the city of Manila, Republic of the Philippines, this 18th day of April in the year one thousand nine hundred and forty-seven, Anno Domini; and of the Independence of the Philippines the first, corresponding to the 18th day of the fourth month of the thirty-sixth year of the Republic of China.

For the Republic of the Philippines :
(Sgd.) MANUEL ROXAS

For the Republic of China :
(Sgd.) CHEN CHIH-PING.

COMMUNICATION TO THE GOVERNMENT OF AUSTRIA REGARDING THE TERMINATION OF THE STATE OF WAR BETWEEN AUSTRIA AND THE UNITED KINGDOM, SEPTEMBER, 1947.

His Majesty's Government in the United Kingdom, bearing in mind that, on March 13, 1938 Austria was forcibly incorporated into the German Reich,

that on September 3, 1939, a state of war was notified with the whole of the German Reich,

that the Government of the United Kingdom was a party to the declaration issued at Moscow on November 1, 1943, announcing that Austria should be liberated from German domination and re-established as a free and independent State,

that active hostilities were ended by the Declaration regarding the Surrender of the German Reich issued on June 5, 1945,

that steps were then taken for the establishment of a free and independent Austria and on January 5, 1946, His Majesty's Government in the United Kingdom recognised the existence of Austria as a State and the Austrian Government as the de jure Government thereof, and

that through circumstances beyond Austrian control it has as yet proved impossible to conclude a Treaty which would dispose of questions relating to Austria arising out of the state of war with the German Reich,

have determined that, without prejudice to the provisions of the said Declaration regarding the Surrender of the German Reich, or of the Agreement of June 28, 1946, relating to the Control Machinery for Austria, or to the decision of questions the settlement of which must await the conclusion of a Treaty, the formal

state of war between the United Kingdom and Austria shall be immediately terminated and the relations between themselves and the Austrian Government forthwith brought into conformity with the amity which existed between them before the above mentioned incorporation of Austria into the German Reich.

A notification is, therefore, being published that the formal state of war with Austria has terminated as from four o'clock p.m. on September 16, 1947.

His Majesty's Government in the United Kingdom must, for the present, reserve the right to retain any money or property subject to control by virtue of Trading with the Enemy legislation, or in the custody of any Prize Court, but no obstacle will be placed in the way of the acquisition of property after this date, or of the immediate resumption of full commercial and financial dealings between the United Kingdom and Austria.

His Majesty's Government in the United Kingdom must also, for the present, continue the suspension of the enforcement or settlement of contracts concluded before the war between persons in the United Kingdom and persons in Austria, but contracts concluded after September 16, 1947, will be in the same position as contracts concluded with persons in any friendly country, and no obstacles will be raised in connexion with them by reason of the fact that a formal state of war has previously existed between the United Kingdom and Austria.

Privy Council Office,

September 16, 1947.

DECLARATION BY THE PRESIDENT OF THE REPUBLIC OF CHILE, REGARDING CHILEAN TERRITORIAL CLAIMS, JUNE, 1947.

Considering—

1. That the Governments of the United States of America, of Mexico and of the Argentine Republic, by presidential declarations made on September 28, 1945, October 29, 1945, and October 11, 1946, respectively, have categorically proclaimed the sovereignty of their respective States over the land surface or continental shelf adjacent to their coasts, and over the adjacent seas within the limits necessary to preserve for the said States the natural riches belonging to them, both known and to be discovered in the future;

2. That they have explicitly proclaimed the rights of their States to protect, preserve, control and inspect fishing enterprises, with the object of preventing illicit activities threatening to damage or destroy the considerable natural riches of this kind contained in the seas adjacent to their coasts, and which are

indispensable to the welfare and progress of their respective peoples; and that the justice of such claims is indisputable;

3. That it is manifestly convenient, in the case of the Chilean Republic, to issue a similar proclamation of sovereignty, not only by the fact of possessing and having already under exploitation natural riches essential to the life of the nation and contained in the continental shelf, such as the coal-mines, which are exploited both on the mainland and under the sea, but further because, in view of its topography and the narrowness of its boundaries, the life of the country is linked to the sea and to all present and future natural riches contained within it, more so than in the case of any other country;

4. That international consensus of opinion recognises the right of every country to consider as its national territory any adjacent extension of the epi-continental sea and the continental shelf;

5. That the State has the obligation to protect and guard the exploitation of the natural riches contained in this territory, on sea, on land, and in the air;

The President of the Republic hereby declares—

(1) The Government of Chile confirms and proclaims its national sovereignty over all the continental shelf adjacent to the continental and island coasts of its national territory, whatever may be their depth below the sea, and claims by consequence all the natural riches which exist on the said shelf, both in and under it, known or to be discovered.

(2) The Government of Chile confirms and proclaims its national sovereignty over the seas adjacent to its coasts whatever may be their depths, and within those limits necessary in order to reserve, protect, preserve and exploit the natural resources of whatever nature found on, within and below the said seas, placing within the control of the Government especially all fisheries and whaling activities with the object of preventing the exploitation of natural riches of this kind to the detriment of the inhabitants of Chile and to prevent the spoiling or destruction of the said riches to the detriment of the country and the American continent.

(3) The demarcation of the protection zones for whaling and deep sea fishery in the continental and island seas under the control of the Government of Chile will be made in virtue of this declaration of sovereignty at any moment which the Government may consider convenient, such demarcation to be ratified, amplified or modified in any way to conform with the knowledge, discoveries, studies and interests of Chile as required in the future. Protection and control is hereby declared immediately over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 nautical miles from the coasts of Chilean territory. This demarcation will be calculated to include the Chilean islands, indicating a maritime zone contiguous to the coasts of the said islands,

projected parallel to these islands at a distance of 200 nautical miles around their coasts.

(4) The present declaration of sovereignty does not disregard the similar legitimate rights of other States on a basis of reciprocity, nor does it affect the rights of free navigation on the high seas.

(Sgd.) GABRIEL GONZALEZ VIDELA
President of the Republic.

PERUVIAN DECREE REGARDING NATIONAL SOVEREIGNTY AND JURISDICTION OVER THE CONTINENTAL AND INSULAR SHELF.

The President of the Republic

CONSIDERING

That the continental submerged shelf forms one entire morphological and geological unit with the continent;

That this shelf contains certain natural resources which must be proclaimed as our national heritage;

That it is deemed equally necessary that the State protect, maintain and establish a control of fisheries and *other* natural resources found in the continental waters which cover the submerged shelf and the adjacent continental seas in order that these resources which are so essential to our national life may continue to be exploited now and in the future in such a way as to cause no detriment to the country's economy or to its food production;

That the value of the fertilizer left by the guano birds on islands off the Peruvian coast also requires for its safeguard the protection, maintenance and establishment of a control of the fisheries which serve to nourish these birds;

That the right to proclaim sovereignty and national jurisdiction over the entire extension of the submerged shelf as well as over the continental waters which cover it and the adjacent seas in the area required for the maintenance and vigilance of the resources therein contained, has been claimed by other countries and practically admitted in international law (Declaration of the President of the United States of September 28, 1945; Declaration of the President of Mexico of October 29, 1945; Decree of the President of the Argentine of October 11, 1946; Declaration of the President of Chile of June 23, 1947);

That Article 37 of the State Constitution establishes that all mines, lands, forests, waters and in general all sources of natural wealth pertain to the State, with the exception of rights legally acquired;

That in fulfilment of its sovereignty and in defence of national economic interests it is the obligation of the State to determine in an irrefutable manner the maritime dominion of the nation,

within which should be exerted the protection, maintenance and vigilance of the aforesaid resources;

With the advisory vote of the Cabinet:

DECREES:

1. To declare that national sovereignty and jurisdiction can be extended to the submerged continental or insular shelf adjacent to the continental or insular shores of national territory, whatever the depth and extension of this shelf may be.

2. National sovereignty and jurisdiction are to be extended over the sea adjoining the shores of national territory whatever its depth and in the extension necessary to reserve, protect, maintain and utilise natural resources and wealth of any kind which may be found in or below those waters.

3. As a result of previous declarations the State reserves the right to establish the limits of the zones of control and protection of natural resources in continental or insular seas which are controlled by the Peruvian Government and to modify such limits in accordance with future changes which may originate as a result of further discoveries, studies or national interests which may arise in the future and at the same time declares that it will exercise the same control and protection on the adjacent seas to the Peruvian coast over the area covered between the coast and an imaginary parallel line to it at a distance of 200 (two hundred) nautical miles measured following the line of the geographical parallels. As regards islands pertaining to the nations, this demarcation will be traced taking the sea area adjacent to the shores of these islands at a distance of 200 (two hundred) nautical miles, measured from all points on the contour of these islands.

4. The present declaration does not affect the right to free navigation of ships of all nations according to international law.

Given at Government House, Lima, on the 1st day of August, 1947.

(Sgd.) J. L. BUSTAMANTE RIVERO and E. Garcia Sayan.

DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS [1]

Article 1

All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers.

[1] Official Records of the United Nations Economic and Social Council, 3rd Year, 6th Session, Supplement No. 1, 1948.

ARTICLE 2

In the exercise of his rights every one is limited by the rights of others and by the just requirements of the democratic State. The individual owes duties to society through which he is enabled to develop his spirit, mind and body in wider freedom.

ARTICLE 3

1. Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin.

2. All are equal before the law regardless of office or status and entitled to equal protection of the law against any arbitrary discrimination, or against any incitement to such discrimination, in violation of this Declaration.

ARTICLE 4

Every one has the right to life, to liberty and security of person.

ARTICLE 5

No one shall be deprived of his personal liberty or kept in custody except in cases prescribed by law and after due process. Every one placed under arrest or detention shall have the right to immediate judicial determination of the legality of any detention to which he may be subject and to trial within a reasonable time or to release.

ARTICLE 6

Every one shall have access to independent and impartial tribunals in the determination of any criminal charge against him, and of his rights and obligations. He shall be entitled to a fair hearing of his case and to have the aid of a qualified representative of his own choice, and if he appears in person to have the procedure explained to him in a manner in which he can understand it and to use a language which he can speak.

ARTICLE 7

1. Any person is presumed to be innocent until proved guilty. No one shall be convicted or punished for crime or other offence except after fair public trial at which he has been given all guarantees necessary for his defence. No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

2. Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognised by civilised nations.

3. No one shall be subjected to torture, or to cruel or inhuman punishment or indignity.

Article 8

Slavery, in all its forms, being inconsistent with the dignity of man, shall be prohibited by law.

Article 9

Every one shall be entitled to protection under law from unreasonable interference with his reputation, his privacy and his family. His home and correspondence shall be inviolable.

Article 10

1. Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in general interest, there shall be liberty of movement and free choice of residence within the border of each State.

2. Individuals shall have the right to leave their own country and, if they so desire, to acquire the nationality of any country willing to grant it.

Article 11

Every one shall have the right to seek and be granted asylum from persecution. This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Article 12

Every one has the right, everywhere in the world, to recognition as a person before the law and to the enjoyment of fundamental civil rights.

Article 13

1. The family deriving from marriage is the natural and fundamental unit of society. Men and women shall have the same freedom to contract marriage in accordance with the law.

2. Marriage and the family shall be protected by the State and Society.

Article 14

1. Every one has the right to own property in conformity with the laws of the State in which such property is located.

2. No one shall be arbitrarily deprived of his property.

ARTICLE 15

Every one has the right to a nationality.

All persons who do not enjoy the protection of any Government shall be placed under the protection of the United Nations. This protection shall not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

ARTICLE 16

1. Individual freedom of thought and conscience, to hold and change beliefs, is an absolute and sacred right.

2. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in worship, observance, teaching and practice.

(With regard to the following two articles, 17 and 18, the Commission decided not to elaborate a final text until it had before it the views of the Sub-Commission on Freedom of Information and of the Press and of the United Nations Conference on Freedom of Information.)

[ARTICLE 17]

(1. Every one is free to express and impart opinions, or to receive and seek information and the opinion of others from sources wherever situated.

2. No person may be interfered with on account of his opinions.)

[ARTICLE 18]

(There shall be freedom of expression either by word, in writing, in the press, in books or by visual, auditive or other means. There shall be equal access to all channels of communication.)

ARTICLE 19

Every one has the right to freedom of peaceful assembly and to participate in local, national and international associations for purposes of a political, economic, religious, social, cultural, trade union or any other character, not inconsistent with this Declaration.

ARTICLE 20

Every one has the right, either individually, or in association with others, to petition or to communicate with the public authorities of the State of which he is a national or in which he resides, or with the United Nations.

ARTICLE 21

Every one without discrimination has the right to take an effective part in the government of his country. The State shall conform to the will of the people as manifested by elections which shall be periodic, free, fair and by secret ballot.

Article 22

1. Every one shall have equal opportunity to engage in public employment and to hold public office in the State of which he is a citizen or a national.

2. Access to public employment shall not be a matter of privilege or favour.

Article 23

1. Every one has the right to work.

2. The State has a duty to take such measures as may be within its power to ensure that all persons ordinarily resident in its territory have an opportunity for useful work.

3. The State is bound to take all necessary steps to prevent unemployment.

Article 24

1. Every one has the right to receive pay commensurate with his ability and skill, to work under just and favourable conditions and to join trade unions for the protection of his interests in securing a decent standard of living for himself and his family.

2. Women shall work with the same advantages as men and receive equal pay for equal work.

Article 25

Every one without distinction as to economic and social conditions has the right to the preservation of his health through the highest standard of food, clothing, housing and medical care which the resources of the State or community can provide. The responsibility of the State and community for the health and safety of its people can be fulfilled only by provision of adequate health and social measures.

Article 26

1. Every one has the right to social security. The State has a duty to maintain or ensure the maintenance of comprehensive measures for the security of the individual against the consequence of unemployment, disability, old age and all other loss of livelihood for reasons beyond his control.

2. Motherhood shall be granted special care and assistance. Children are similarly entitled to special care and assistance.

Article 27

Every one has the right to education. Fundamental education shall be free and compulsory. There shall be equal access for higher education as can be provided by the State or community on the basis of merit and without distinction as to race, sex, language, religion, social standing, financial means, or political affiliation.

Article 28

Education will be directed to the full physical, intellectual, moral and spiritual development of the human personality, to the strengthening of respect for human rights and fundamental freedoms and to the combating of the spirit of intolerance and hatred against other nations or racial or religious groups everywhere.

Article 29

1. Every one has the right to rest and leisure.
2. Rest and leisure should be ensured to every one by laws or contracts providing in particular for reasonable limitations on working hours and for periodic vacations with pay.

Article 30

Every one has the right to participate in the cultural life of the community, to enjoy the arts and to share in the benefits that result from scientific discoveries.

[Article 31]

(The Commission did not take a decision on the two texts that follow. They are reproduced here for further consideration.)

(*Text proposed by the Drafting Committee:*

In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right, as far as compatible with public order, to establish and maintain schools and cultural or religious institutions, and to use their own language in the Press, in public assembly and before the courts and other authorities of the State.)

(*Text proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities:*

In States inhabited by well-defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups shall have the right, as far as is compatible with public order and security, to establish and maintain their schools and cultural or religious institutions, and to use their own language and script in the Press, in public assembly and before the courts and other authorities of the State, if they so choose.)

Article 32

All laws in any State shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter, insofar as they deal with human rights.

Article 33

Nothing in this Declaration shall be considered to recognise the right of any State or person to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

PART I

Article 1

The States parties hereto declare that they recognise the principles set forth in Part II hereof as being among the human rights and fundamental freedoms founded on the general principles of law recognised by civilised nations.

Article 2

Every State, party hereto, undertakes to ensure :

(*a*) That its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless persons, the enjoyment of these human rights and fundamental freedoms;

(*b*) That such laws, respecting these human rights and fundamental freedoms, conform with the general principles of law recognised by civilised nations;

(*c*) That any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(*d*) That such remedies shall be enforceable by a judiciary whose independence is secured; and

(*e*) That its police and executive officers shall act in support of the enjoyment of these rights and freedoms.

Article 3

On receipt of a request to this effect from the Secretary-General of the United Nations made under the authority of a resolution of the General Assembly, the Government of any party to this Covenant shall supply an explanation as to the manner in which the law of that State gives effect to any of the provisions of this Covenant.

Article 4

1. In time of war or other public emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.

2. Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons

therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

PART 2

Article 5

It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 6

It shall be unlawful to subject any person to any form of physical mutilation or medical or scientific experimentation against his will.

Article 7

No person shall be subjected to torture or to cruel or inhuman punishment or to cruel or inhuman indignity.

Article 8

1. No person shall be held in slavery or servitude.

2. No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.

3. For the purposes of this Article, the term "forced or compulsory labour" shall not include :

(*a*) Any service of a purely military character, or service of a non-military character in the case of conscientious objectors, exacted in virtue of compulsory military service laws;

(*b*) Any service exacted in cases of emergency created by fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect or vegetable pests, or similar calamities or other emergencies threatening the life or well-being of the community;

(*c*) Any minor communal services considered as normal civic obligations incumbent upon the members of the community, provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives.

Article 9

1. No person shall be subjected to arbitrary arrest or detention.

2. No person shall be deprived of his liberty save in the case of :

(*a*) The arrest of a person effected for the purpose of bringing him before a court on a reasonable suspicion of having committed

a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;

(*b*) The lawful arrest and detention of a person for non-compliance with the lawful order or decree of a court;

(*c*) The lawful detention of a person sentenced after conviction to deprivation of liberty;

(*d*) The lawful detention of persons of unsound mind;

(*e*) The parental or quasi-parental custody of minors;

(*f*) The lawful arrest and detention of a person to prevent his effecting an unauthorised entry into the country;

(*g*) The lawful arrest and detention of aliens against whom deportation proceedings are pending.

3. Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested under the provisions of sub-paragraphs (*a*) or (*b*) of paragraph 2 of this Article shall be brought promptly before a judge, and shall be tried within a reasonable time or released.

4. Every person who is deprived of his liberty shall have an effective remedy in the nature of '*habeas corpus*' by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.

Article 10

No person shall be imprisoned or held in servitude in consequence of the mere breach of a contractual obligation.

Article 11

1. Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest, there shall be liberty of movement and free choice of residence within the borders of each State.

2. Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his own.

Article 12

No alien legally admitted to the territory of a State shall be arbitrarily expelled therefrom.

Article 13

1. In the determination of any criminal charge against him or of any of his civil rights or obligations, every person is entitled to a fair hearing before an independent and impartial tribunal and to the aid of a qualified representative of his own choice.

2. No person shall be convicted or punished for crime except after public trial.

Article 14

1. No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

2. Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 15

No person shall be deprived of his juridical personality.

Article 16

1. Every person shall have the right to freedom of religion, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold and manifest any religious or other belief, to change his belief, and to practise any form of religious worship and observance, and he shall not be required to do any act which is contrary to such worship and observance.

2. Every person of full age and sound mind shall be free, either alone or in a community with other persons of like mind, to give and receive any form of religious teaching, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

3. The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and welfare, morals and the rights and freedoms of others.

[Article 17]

(The Commission decided not to elaborate a final text on this article until it had before it the views of the Sub-Commission on the Freedom of Information and of the Press and of the United Nations Conference on Freedom of Information. The texts reproduced below have been proposed by the Drafting Committee and by the representative of the *United States* respectively.)

(*Text proposed by the Drafting Committee:*

1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art or otherwise.

2. Every person shall be free to receive and disseminate information of all kinds, including facts, critical comment and ideas, by

the medium of books, newspapers, oral instructions or any other lawfully operated device.

3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to : matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of government, or to promote disorder or crime ; obscene publications; (publications aimed at the suppression of human rights and fundamental freedoms); publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.)

(*Text proposed by the representative of the United States:*

Every one shall have the right to freedom of information, speech and expression. Every one shall be free to hold his opinion without molestation, to receive and seek information and the opinion of others from sources wherever situated, and to disseminate opinions and information, either by word, in writing, in the Press, in books or by visual, auditive or other means.)

Article 18

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter on which under Article 17 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for :

(*a*) The protection of life or property;

(*b*) The prevention of disorders; or

(*c*) The prevention of the obstruction of traffic or the free movement of others.

Article 19

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the State, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 17 the dissemination is unrestricted. The rights and freedoms set forth in Articles 16 and 17 shall be enjoyed by such associations.

Article 20

Every person shall be entitled to the rights and freedoms set forth in this Covenant, without distinction as to race (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin. Every person, regardless of office or status, shall be entitled to equal protection under

the law against any arbitrary discrimination or against any incitement to such discrimination in violation of this Covenant.

Article 21

Any advocacy of national, racial or religious hostility that constitutes an incitement to violence shall be prohibited by the law of the State.

Article 22

Nothing in this Covenant shall be considered to give any person or State the right to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

PART 3

Article 23

1. This Covenant shall be open for accession to every State Member of the United Nations or party to the Statute of the International Court of Justice and to every other State which the General Assembly of the United Nations shall, by resolution, declare to be eligible.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations, and as soon as two-thirds of the States Members of the United Nations have deposited such instruments the Covenant shall come into force between them. As regards any State which accedes thereafter, the Covenant shall come into force on the date of the deposit of its instrument of accession.

3. The Secretary-General of the United Nations shall inform all Members of the United Nations and the other States referred to in paragraph 1 above of the deposit of each instrument of accession.

Article 24

In the case of a Federal State, the following provisions shall apply :

(*a*) With respect to any Articles of this Covenant which the federal government regards as wholly or in part appropriate for federal action, the obligations of the federal government shall, to this extent, be the same as those of parties which are not federal States;

(*b*) In respect of Articles which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, Provinces or Cantons, the federal government shall bring such provisions, with a favourable recommendation, to the notice of the appropriate authorities of the States, Provinces or Cantons.

Article 25

1. This Covenant shall apply in respect of any colony or overseas territory of a State party hereto, or any territory subject to the suzerainty or protection of such State, or any territory in respect of which such State exercises a mandate or trusteeship, when that State has acceded on behalf and in respect of such colony or territory.

2. The State concerned shall, if necessary, seek the consent at the earliest possible moment of the governments of all such colonies and territories to this Covenant and accede on behalf and in respect of each such colony and territory immediately its consent has been obtained.

Article 26

1. Amendments to this Covenant shall come into force when they have been adopted by a vote of two-thirds of the Members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties to this Covenant.

2. When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Covenant which they have accepted by accession, including earlier amendments which they have ratified.

Article 27

In construing the Articles of this Covenant, the several Articles shall be regarded in their relation to each other.

TREATY BETWEEN BELGIUM, FRANCE, LUXEMBOURG, THE NETHERLANDS AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, SIGNED AT BRUSSELS ON MARCH 17, 1948.

His Royal Highness the Prince Regent of Belgium, the President of the French Republic, President of the French Union, Her Royal Highness the Grand Duchess of Luxembourg, Her Majesty the Queen of the Netherlands, and His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas,

Resolved

To reaffirm their faith in fundamental human rights, in the dignity and worth of the human person and in the other ideals proclaimed in the Charter of the United Nations;

To fortify and preserve the principles of democracy, personal freedom and political liberty, the constitutional traditions and the rule of law, which are their common heritage;

To strengthen, with these aims in view, the economic, social and cultural ties by which they are already united;

To co-operate loyally and to co-ordinate their efforts to create in Western Europe a firm basis for European economic recovery;

To afford assistance to each other, in accordance with the Charter of the United Nations, in maintaining international peace and security and in resisting any policy of aggression;

To take such steps as may be held to be necessary in the event of a renewal by Germany of a policy of aggression;

To associate progressively in the pursuance of these aims other States inspired by the same ideals and animated by the like determination;

Desiring for these purposes to conclude a treaty for collaboration in economic, social and cultural matters and for collective self-defence,

Have appointed as their Plenipotentiaries :

His Royal Highness the Prince Regent of Belgium, H.E. Mr. Paul-Henri Spaak and H.E. Mr. Gaston Eyskens

The President of the French Republic, President of the French Union, H.E. Mr. Georges Bidault and H.E. Mr. J. de Hauteclocque

Her Royal Highness the Grand Duchess of Luxembourg, H.E. Mr. J. Bech and H.E. Mr. R. Als

Her Majesty the Queen of the Netherlands, H.E. Baron van B. van Oosterhout and H.E. Baron van Harinxma Thoe Slooten

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas

for the United Kingdom of Great Britain and Northern Ireland, the Rt. Hon. Ernest Bevin and H.E. Sir George W. Rendel

who, having exhibited their full powers found in good and due form, have agreed as follows :

Article 1

Convinced of the close community of their interests and of the necessity of uniting in order to promote the economic recovery of Europe, the High Contracting Parties will so organise and co-ordinate their economic activities as to produce the best possible results, by the elimination of conflict in their economic policies, the co-ordination of production and the development of commercial exchanges.

The co-operation provided for in the preceding paragraph, which will be effected through the Consultative Council referred to in Article 7 as well as through other bodies, shall not involve any duplication of, or prejudice to, the work of other economic organisations in which the High Contracting Parties are or may be represented but shall on the contrary assist the work of those organisations.

Article 2

The High Contracting Parties will make every effort in common, both by direct consultation and in specialised agencies, to promote the attainment of a higher standard of living by their peoples and to develop on corresponding lines the social and other related services of their countries.

The High Contracting Parties will consult with the object of achieving the earliest possible application of recommendations of immediate practical interest, relating to social matters, adopted with their approval in the specialised agencies.

They will endeavour to conclude as soon as possible conventions with each other in the sphere of social security.

Article 3

The High Contracting Parties will make every effort in common to lead their peoples towards a better understanding of the principles which form the basis of their common civilisations and to promote cultural exchanges by conventions between themselves or by other means.

Article 4

If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.

Article 5

All measures taken as a result of the preceding Article shall be immediately reported to the Security Council. They shall be terminated as soon as the Security Council has taken the measures necessary to maintain or restore international peace and security.

The present treaty does not prejudice in any way the obligations of the High Contracting Parties under the provisions of the Charter of the United Nations. It shall not be interpreted as affecting in any way the authority and responsibility of the Security Council under the Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Article 6

The High Contracting Parties declare, each so far as he is concerned, that none of the international engagements now in force between him and any other High Contracting Party or any third State is in conflict with the provisions of the present Treaty.

None of the High Contracting Parties will conclude any alliance or participate in any coalition directed against any other of the High Contracting Parties.

ARTICLE 7

For the purpose of consulting together on all tne questions dealt with in the present Treaty, the High Contracting Parties will create a Consultative Council, which shall be so organised as to be able to exercise its functions continuously. The Council shall meet at such times as it shall deem fit.

At the request of any of the High Contracting Parties, the Council shall be immediately convened in order to permit the High Contracting Parties to consult with regard to any situation which may constitute a threat to peace, in whatever area this threat should arise; with regard to the attitude to be adopted and the steps to be taken in case of a renewal by Germany of an aggressive policy; or with regard to any situation constituting a danger to economic stability.

ARTICLE 8

In pursuance of their determination to settle disputes only by peaceful means, the High Contracting Parties will apply to disputes between themselves the following provisions:

The High Contracting Parties will, while the present treaty remains in force, settle all disputes falling within the scope of Article 36, paragraph 2, of the Statute of the International Court of Justice by referring them to the Court, subject only, in the case of each of them, to any reservation already made by that Party when accepting this clause for compulsory jurisdiction to the extent that that Party may maintain the reservation.

In addition, the High Contracting Parties will submit to conciliation all disputes outside the scope of Article 36, paragraph 2, of the Statute of the International Court of Justice.

In the case of a mixed dispute involving both questions for which conciliation is appropriate and other questions for which judicial settlement is appropriate, any Party to the dispute shall have the right to insist that the judicial settlement of the legal questions shall precede conciliation.

The preceding provisions of this Article in no way affect the application of relevant provisions or agreements prescribing some other method of pacific settlement.

ARTICLE 9

The High Contracting Parties may, by agreement, invite any other State to accede to the present Treaty on conditions to be agreed between them and the State so invited.

Any State so invited may become a Party to the Treaty by depositing an instrument of accession with the Belgian Government.

The Belgian Government will inform each of the High Contracting Parties of the deposit of each instrument of accession.

ARTICLE 10

The present Treaty shall be ratified and the instruments of ratification shall be deposited as soon as possible with the Belgian Government.

It shall enter into force on the date of the deposit of the last instrument of ratification and shall thereafter remain in force for fifty years.

After the expiry of the period of fifty years, each of the High Contracting Parties shall have the right to cease to be a party thereto provided that he shall have previously given one year's notice of denunciation to the Belgian Government.

The Belgian Government shall inform the governments of the other High Contracting Parties of the deposit of each instrument of ratification and of each notice of denunciation.

In witness whereof, the above mentioned Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done at Brussels, this 17th day of March, 1948, in English and French, each text being equally authentic, in a single copy which shall remain deposited in the archives of the Belgian Government and of which certified copies shall be transmitted by that Government to each of the other signatories.

For Belgium : P.-H. Spaak; Gaston Eyskens.

For France : G. Bidault; J. de Hauteclocque.

For Luxembourg : Joseph Bech; Robert Als.

For the Netherlands; W. van Boetzelaer; van H. Thoe Slooten.

For the United Kingdom of Great Britain and Northern Ireland : Ernest Bevin; George Rendel.

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